

The Money Pit: Don't Fall Into the Rent-to-Own Trap

Understanding the Protections for Home Buyers in Virginia's 2019 Residential Executory Real Estate Contracts Act

May 12, 2023

The Southwest Virginia Legal Aid Society, Inc.



Harvey Survivors Sue Landlord for Taking Their Possessions and Homes

By Amber Joseph [Nov 14, 2017](#)



VICTORIA, Texas – Texas RioGrande Legal Aid filed suit on behalf of four Hurricane Harvey survivors whose Victoria landlord took their personal belongings and rented out their homes after they had been evacuated to an Austin shelter. The plaintiffs are seeking damages from the owners and operators of their apartment complex for wrongful eviction, breach of contract, and unlawfully taking their personal property.

“This adds insult to injury,” said Hank Bostwick, the TRLA attorney filing suit on behalf of the plaintiffs. “These actions were directed at people who were already suffering from the most disastrous hurricane in decades. When these families took refuge from a terrifying storm, the landlord used the situation to its advantage.”



What is an Executory Real Estate Contract?

Executory, adj. 1. Taking a full effect at a future Time <executory judgment>. 2. To be performed at a future time; yet to be completed <**executory contract**>. *Black's Law Dictionary*.

Immediate possession. Buyer occupies premises without **legal title** as “primary residence.”

Future Ownership. Buyer acquires **legal title to real property** *after* the terms of the contract have been met. Buyer *may* have an **equitable interest** during the life of the contract.

What is an Executory Real Estate Contract?

- ★ **Installment Land Contract**
- ★ **Contract for Deed**
- ★ **“Rent-to-Own” Agreement**
- ★ **Lease Agreement with a Purchase Option**

87 U. Chi. L. Rev. 2273

University of Chicago Law Review
November, 2020

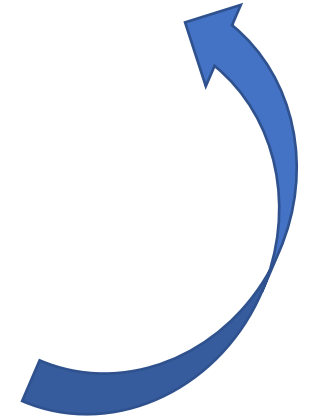
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Caelin Moriarity Miltko ^{d1}

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“WHAT SHALL I GIVE MY CHILDREN?”: INSTALLMENT LAND CONTRACTS,
HOMEOWNERSHIP, AND THE UNEXAMINED COSTS OF THE AMERICAN DREAM

“[The] history of the ILC led at least one jurist to call it the ‘**poor man's mortgage,**’ reflecting its status as a replacement financing device for those who may not qualify for traditional mortgages and thus are more likely to agree to **riskier contracts** . . . ‘the vendor, as with a mortgage, finances the purchaser's acquisition of the property by accepting installment payments on the purchase price over a period of years, but the purchaser does not receive the benefit of those remedial statutes protecting the rights of mortgagors.’” (emphasis added)

“The ILC was especially prominent during the mid-twentieth century in Black communities shut out of the mortgage market by the Federal Housing Administration. Since 2008, the ILC has again become popular: increased regulation of the mortgage market has made it more difficult for low-income homebuyers to get mortgages, but **the underlying desire to participate in the American Dream has not changed**” (emphasis added).



The Ugly Truth Behind “We Buy Ugly Houses”

HomeVestors of America, the self-proclaimed “largest homebuyer in the U.S.,” trains its nearly 1,150 franchisees to zero in on homeowners’ desperation.



Max Erwin for ProPublica

by Anjeanette Damon, Byard Duncan and Mollie Simon
May 11, 6 a.m. EDT

May 11, 2023

AUGUST 2, 2021



As national eviction ban expires, a look at who rents and who owns in the U.S.

BY DREW DESILVER



A Maricopa County constable posts an eviction order for nonpayment of rent in Phoenix on Oct. 1, 2020, despite a nationwide moratorium then in place on evictions from the Centers for Disease Control and Prevention during the coronavirus pandemic. (John Moore via Getty Images)

“One big disparity among renters is race and ethnicity. Nationwide, about 58% of households headed by Black or African American adults rent their homes, as do nearly 52% of Hispanic- or Latino-led households, according to Pew Research Center’s analysis of census data. By contrast, roughly a quarter of households led by non-Hispanic White adults (27.9%) are rentals, as are just under 40% of Asian-led households.”



The risks and benefits of rent-to-own agreements

Perspective by Harvey S. Jacobs
May 6, 2020 at 7:30 a.m. EDT



Usually, in a rent-to-own arrangement, the rent is above fair market value, since some percentage will be applied to a tenant's earnest money deposit. (iStock)

May 6, 2020

“The tenant also bears risks. For example, a seller may further encumber the home by taking out additional mortgages or drawing on existing home equity credit lines. If the seller does that, the purchase price may no longer be enough to allow the seller to convey the home free and clear. Other risks arise if a seller dies or becomes incapacitated. If that occurs, the home could be tied up in probate or other legal proceedings for years. An unscrupulous seller could sell the home to someone else. Such a sale would be illegal, but the tenant would then have to successfully sue the seller for damages and might not be able to void the illegal sale. One way to reduce the tenant’s risk is to record the lease in the land records of your state. By recording the lease, the public is on notice that the tenant has an equitable right to acquire the home.”

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VA SB1449 | 2019 | Regular Session



Virginia Senate Bill 1449 (*Prior Session Legislation*)

VA State Legislature page for SB1449

- Summary
- Sponsors
- Texts
- Votes
- Research
- Comments
- Track

Status

Completed Legislative Action
Spectrum: Partisan Bill (Democrat 2-0)
Status: Passed on March 18 2019 - 100% progression
Action: 2019-03-18 - Governor: Acts of Assembly Chapter text (CHAP0511)
Text: [Latest bill text \(Chaptered\)](#) [HTML]

Summary

Virginia Residential Executory Real Estate Contracts Act. Creates the Virginia Residential Executory Real Estate Contracts Act establishing provisions applicable to such contracts. The bill defines a residential executory real estate contract as an installment land contract, lease option contract, or rent-to-own contract by which a purchaser acquires any right or interest in real property other than a right of first refusal and occupies or intends to occupy the property as his primary residence. The bill also provides for the Board for Housing and Community Development to develop and make available on its website best practice provisions for residential executory real estate contracts. As introduced, this bill was a recommendation of the Virginia Housing Commission.

exchange for the right to purchase the property that is the subject of such contract at a specific price within a specified time.

"Purchaser" means a person who enters into a residential executory real estate contract.

"Residential executory real estate contract" means an installment land contract, lease option contract, or rent-to-own contract by which a purchaser acquires any right or interest in real property other than a right of first refusal and occupies or intends to occupy the property as his primary residence.

"Vendor" means the person who sells, or proposes to sell, real property under a residential executory real estate contract.

2019, c. 511, § 55-252.1.

Virginia's 2019 Residential Executory Real Estate Contracts Act: Exemptions

The provisions of this chapter shall not apply to residential executory real estate contracts where the vendor is:

1. A natural person, an estate, or a legal entity **that owns no more than two single-family residential dwelling units in the Commonwealth unless the person or entity is an agent, affiliate, subsidiary, or parent company to another legal entity that owns at least one additional residential dwelling unit in the Commonwealth;**
2. A **real estate licensee**
3. A **bank, savings institution, credit union, or mortgage lender**

Code of Virginia § 55.1-3001



Virginia's 2019 Residential Executory Real Estate Contracts Act: Protections



A “rent-to-own” agreement “shall be” subject to the **Virginia Residential Landlord and Tenant Act (VRLTA)**. Code of Virginia § 55.1-3002(A).



A “rent-to-own” agreement must contain **an option to purchase the property at any time before the option expires with no fee or penalty**. Code of Virginia § 55.1-3002(B)(1).



The **vendor** of a “rent-to-own” agreement may recover possession based on non-payment of rent “only if the **delinquent obligation remains outstanding more than 30 days after notice** is served upon the **purchaser** notifying him of (i) the nonpayment, (ii) the amount of the delinquency, and (iii) the vendor's intention to terminate the lease if the default is not timely cured.” Code of Virginia § 55.1-3002(B)(2).



Five Day Pay or Quit does not apply.

Virginia's 2019 Residential Executory Real Estate Contracts Act: Protections



Option Payment in a “rent-to-own” agreement **may not be forfeited** but may be applied to “any amounts owed by [the] purchaser under” the “rent-to-own” agreement. Code of Virginia § 55.1-3002(B)(3).



Downpayments? Consider “security deposits and insurance premiums” under VRLTA. Code of Virginia § 55.1-1206(A); § 55.1-1208(A)(7).



A “rent-to-own” agreement **“may be recorded** in the office of the clerk of the circuit court where the real property is located.” Code of Virginia § 55.1-3002(C).



The requirements of the 2019 Act **“shall not be waived by contract.”** Code of Virginia § 55.1-3002(D).

Virginia's 2019 Residential Executory Real Estate Contracts Act: Application



Enacted during 2019 Session of the General Assembly and took effect on July 1, 2019. § 55.1-3002 safeguards shall be applied to “every executory real estate contract.”



Retroactive? No. See *Davis v. Randolph Williams at Goose Creek, LLC*, 106 Va. Cir. 477 (2020)—

“Because the terms of the [2019 Act] do not require a retroactive application and because the statutes require the insertion of several substantive contractual rights, Code § 55.1-3002 and Code § 55-252.3 are not statutes intended to be applied retroactively. Accordingly, the Court finds that they do not apply to a real estate contract that, like the instant Sales Contract, was executed prior to their effective dates.”

Virginia's 2019 Residential Executory Real Estate Contracts Act: Remedies, Generally



If the vendor defaults, the purchaser shall be entitled to bring an action in a court of competent jurisdiction (i) to enjoin further violations; (ii) to recover the purchaser's actual damages; (iii) for specific performance of the contract; (iv) for rescission; or (v) to receive other equitable relief as the court may find appropriate in the interests of justice.

The prevailing party . . . **may be awarded reasonable attorney fees and costs.**



Code of Virginia § 55.1-3002(B)(4-5)

Virginia's 2019 Residential Executory Real Estate Contracts Act: Remedies



Obtain an **injunction**. Not the most practical approach. Circuit court?



Recover **actual damages**.

Calculating damages? Difference between fair market rent and the monthly “rent-to-own” payment. Return portion of “downpayment” or “purchase option” that exceeds the cost of two month’s rent. See VRLTA.

e.g. Local fair market monthly rent for similar home = \$750

Monthly payment per “rent-to-own” agreement = \$1000

Potential Damages = \$250 per month of contract term

Virginia's 2019 Residential Executory Real Estate Contracts Act: Remedies



Specific Performance.

“Specific performance is an equitable remedy. A suit in equity for specific performance is distinct from an action at law for breach of contract. There is no right to specific performance that a court is obligated to enforce. *Cox v. Cox*, 67 Va. (26 Gratt.) 305, 308 (1875); see also 1 William Minor Lile, *Notes of Lectures on Equity Jurisprudence* 224 (1921) (‘The most striking feature of the remedy of specific performance is, that it is not regarded as a strict right which the court is bound to enforce, but *as an extraordinary act of grace on the part of the court*, to be granted only where the plaintiff makes out his case fully.’ He who seeks specific performance bears the burden of proving both that there is a definite contract and that he has performed all that is required of him (or that he is ready and willing to perform at the time of his suit), and that all conditions precedent have been fulfilled.” See *Davis v. Randolph Williams at Goose Creek, LLC*, 106 Va. Cir. 477 (2020)(emphasis added).



Rescission. Remedy available to non-defaulting party—restores parties to their pre-contractual positions.

Virginia's 2019 Residential Executory Real Estate Contracts Act: Remedies



“Other **equitable relief** as the court may find appropriate in the interests of justice.” Code of Virginia § 55.1-3002(B)(4)(v).



Unjust enrichment. Unjustifiable benefits to Landlord/Vendor. Think, *home repairs*.



Unconscionability. Outrageous contract provisions. See Va. Code Ann. § 8.2-302.



Unequal Bargaining Power. Watch out for “as is” agreements.



Reformation. Request to court to modify a written agreement to reflect the actual intent of the parties, usu. to correct fraud or mutual mistake, such as an incomplete property description in a deed.

In Virginia, a party may seek reformation based on a unilateral mistake "accompanied by misrepresentation and fraud." *Ward v. Ward*, 239 Va. 1, 387 S.E.2d 460 (1990).

The 2019 Residential Executory Real Estate Contracts Act & the Virginia Residential Landlord Tenant Act (VRLTA)



Virginia Statement of Tenant Rights and Responsibilities as of July 1, 2020

This is a summary of tenants' rights and responsibilities under the Virginia Residential Landlord and Tenant Act. This summary does not modify your lease or Virginia law. A lease cannot give up a tenant's rights under the law. The information below is not intended as legal advice. Tenants with questions are encouraged to contact their local legal aid program at (866) 534-5234 or valegalaid.org/find-legal-help.

Tenant Rights

Applications:

Tenants may be charged a nonrefundable application fee of no more than \$50 (not including third party costs for a background check) and a refundable application deposit. If the tenant does not rent the unit, the application deposit must be returned, minus any actual costs or damages. (§55.1-1203)

Written lease:

Under the VRLTA, a landlord is required to provide a tenant a written lease. If a landlord fails to do so, the VRLTA still protects a tenant by establishing a statutory lease between landlord and tenant for 12 months not subject to automatic renewal. (§55.1-1204)

Disclosure:

A landlord must reveal certain information to the tenant, including any visible evidence of mold (§55.1-1215), the name and address of the owner or property manager (§55.1-1216) and notice of sale or foreclosure of the property. (§§55.1-1216, 1237).

Security Deposit:

A landlord may require a security deposit of up to two month's rent. Within five days of move in the tenant has a right to object to anything in the move-in report. The tenant also has a right to be present at a move-out inspection, which must be made within 72 hours of delivery of possession. (§§55.1-1214, 1226)

Va. Code Ann. § 55.1-1204(H).
(Terms and conditions of rental agreement)

“[T]he landlord shall not file or maintain an action against the tenant in any court of law for any alleged lease violation until he has provided the tenant with the statement of tenant rights and responsibilities.”
(emphasis added).



The 2019 Residential Executory Real Estate Contracts Act & the Virginia Residential Landlord Tenant Act (VRLTA)

TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION
 Commonwealth of Virginia VA. CODE § 55.1-1243.1
 _____ General District Court
 _____ CITY OR COUNTY
 _____ STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).
 TO THE DEFENDANT(S): You are summoned to appear before this Court at the above address
 on _____ to answer the Plaintiff(s)' civil claim (see below).
 RETURN DATE AND TIME _____

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

CLAIM: I, the undersigned Plaintiff(Tenant), this day assert that Plaintiff(s)(Tenant) entered into a rental agreement as indicated with Defendant(s)(Landlord) for the rental of a dwelling unit.

DATE RENTAL AGREEMENT ENTERED INTO _____ DATE RENTAL PERIOD BEGAN _____ DATE RENTAL PERIOD ENDS _____

ADDRESS/LOCATION OF DWELLING UNIT _____

I further assert that Defendant(Landlord) willfully and without authority from the court

- removed or excluded Plaintiff(s) from the dwelling unit unlawfully,
- interrupted or caused the interruption of an essential service to Plaintiff(s),
- took action to make premises unsafe,

specifically _____

Plaintiff(s) therefore requests that the court grant the following relief:

- allow Plaintiff(s) to recover possession of the dwelling unit;
- require Defendant(s) to resume any interrupted essential service;
- fix any willful actions taken by Defendant(s) agent to make premises unsafe for habitation;
- terminate the rental agreement at Plaintiff(s) request;
- recover actual damages of _____, and statutory damages, and/or
- reasonable attorney fees.

DATE _____ [] PLAINTIFF-TENANT [] PLAINTIFF-TENANT'S ATTORNEY

CASE DISPOSITION Defendant(s) Present? [] YES [] NO
 The court having found that Plaintiff(s) made reasonable efforts to alert Defendant(s) of the hearing and there is good cause to issue a preliminary order ex parte and set this matter for a full hearing, the court orders Defendant(s) to: [] allow Plaintiff(s) to recover possession

CASE NO. _____

PLAINTIFF(S) (LAST NAME, FIRST NAME MIDDLE INITIAL) _____

v.

DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL) _____

TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.
 To dispute this claim, you must appear on the return date to try this case.
 To dispute this claim, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars _____ ORDERED _____ DUE _____

HEARING DATE AND TIME _____

JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION.

DATE _____

CLERK _____

Va. Code Ann. § 55.1-1239
 (Wrongful failure to supply an essential service)

Va. Code Ann. § 55.1-1243.1
 (Remedies for exclusion from dwelling unit, interruption of services, or actions taken to make premises unsafe)



The 2019 Residential Executory Real Estate Contracts Act & the Virginia Residential Landlord Tenant Act (VRLTA)

Clear All Data

TENANT'S ASSERTION AND COMPLAINT

Commonwealth of Virginia VA. CODE § 55.1-1244

General District Court

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon the Defendant(s) to appear on _____ before this court to answer.

DATE AND TIME

DATE

CLERK DEPUTY CLERK MAGISTRATE

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

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

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

- _____, and these conditions
- constitute material non-compliance by Defendant(s) – Landlord(s) with the rental agreement as indicated below; [or]
- constitute material non-compliance by Defendant(s) – Landlord(s) with the provisions of law, as indicated below; [or]
- will constitute a fire hazard or serious threat to the life, health, or safety of occupant, if not properly corrected, as indicated below;

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

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

_____, and any other appropriate relief.

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

DATE

TENANT

CASE DISPOSITION

Judgment: Plaintiff(s) \$ _____ Defendant(s) \$ _____

\$ _____ costs and \$ _____ attorney fees awarded to Plaintiff(s) Defendant(s)

Distribution of funds held in escrow in the court:

RETURN DATE	CASE NO.
TENANT'S ASSERTION AND COMPLAINT	
PLAINTIFF(S) – TENANT(S)	
v.	
DEFENDANT(S) – LANDLORD(S)	
ADDRESS/LOCATION OF DWELLING UNIT OR PREMISES SUBJECT TO THIS ACTION	
TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on page two about requesting a change of trial location.	
<input type="checkbox"/> To dispute this claim, you <u>must</u> appear on the return date to try this case.	
<input type="checkbox"/> To dispute this case, you <u>must</u> appear on the return date for the judge to set another date for trial. See additional notice on page two.	
* * *	
Bill of Particulars	ORDERED DUE
Grounds of Defense	ORDERED DUE

HEARING DATE AND TIME

Va. Code Ann. § 55.1-1244
(Tenant's assertion; rent escrow)

- Rent must be paid in full
- Notice to landlord in writing
- Rent paid into court prior to end of grace period



The 2019 Residential Executory Real Estate Contracts Act & the Virginia Residential Landlord Tenant Act (VRLTA)



Mold disclosure and remediation required. Va. Code Ann. § 55.1-1215 and § 55.1-1231 (relocation may also be required).



Remedial vs. Nonremedial Breach. 21/30-day notice. Va. Code Ann. § 55.1-1245

Potential Consumer Claims

- ★ **Truth in Lending Disclosures (TILA)** may be required.
- ★ **Usuary** not permitted. *See Code of Virginia § 6.2-303.*
- ★ Virginia's **Consumer Protection Act** applies.

Key Takeaways



Be aware of financially-exploitative terms, including **high downpayments, prepayment penalties, and forfeiture clauses.**



Avoid “as is” purchases.



Watch out for contract terms that **impermissibly shift the burden** for making repairs from the vendor/landlord to the purchaser/tenant.

Key Takeaways

- ★ Remember the difference between **legal and equitable title**.
- ★ **30 days to cure default**—not *5 Days to Pay or Quit*
- ★ **VRLTA:** Vendor is obligated to fulfill a landlord's duties under VRLTA; purchaser retains the rights of a tenant.
- ★ Insist on **recording** your “rent-to-own” contract in the Clerk's Office.

This webinar was prepared and presented by SVLAS solely for general information and is not to be considered specific legal advice to any individual or organization in attendance. If specific legal advice is needed, please consult an attorney. Thank you!

**Presented by
Hank Bostwick
Attorney at Law
Southwest Virginia Legal Aid Society, Inc.
227 West Cherry Street
Marion, Virginia 24354
(276) 783-8300, ext. 2019
hbstwick@svlas.org**



How to Apply

Apply by phone.

Monday through Thursday, 8:30 am to noon and 1 to 4 pm.

Friday 8:30 am to 12:30 pm.

The call is free.

Virginia only: 1.866.534.5243

Nationwide or cellular: 1.888.201.2772

Apply Online!

www.svlas.org

