

City of Alexandria
Virginia Apartment Managers Seminar

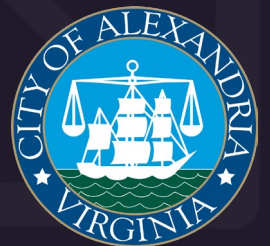
**NAVIGATING THE NEW NORMAL:
VIRGINIA'S LANDLORD TENANT LEGAL
LANDSCAPE AFTER COVID**

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AGENDA

 Part 1: NOTICE REQUIREMENTS

 Part 2: LEGISLATIVE UPDATES (2020-CURRENT)

 Part 3: FEDERAL CARES ACT

 Part 4: FAIR HOUSING

Part 1: NOTICE REQUIREMENTS

BASIC NOTICE REQUIREMENTS

- Addressed to all leaseholders "and all occupants"
- Dated and signed by landlord
- Specify the breach/violation of lease/law
- Specify the cure period (if applicable)
- If nonpayment, must provide accurate balance due and breakdown
- Include certificate of service
- Include reservation of rights (*see next slide*)

RESERVATION OF RIGHTS

§ 55.1-1250

All notices should include reservation of rights 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."*



NOTICE REQUIREMENTS FOR TENANTS WITH SUBSIDIES

§ 55.1-1202(D)

- A public housing authority must include the name, address, and phone number of a local legal aid program on any notice terminating a tenancy.
- Private landlord must put the statewide legal aid telephone number and website address on the **first page** of any notice terminating a tenancy where tenant receives tenant-based rental assistance. This includes HUD and LIHTC properties.
 - *Virginia Legal Aid: VAlegalAid.org / (866) 534-5243.*

Part 2:

LEGISLATIVE UPDATES

(2020-Current)

2020

- Source of Funds
- Survivors of Domestic Violence
- Statement of Tenant's Rights
- Notice to Subsidized Tenants about Legal Aid (*see slide 2*)
- Security Deposit Insurance
- Late Fee Limits
- Repair & Deduct
- Relief for Gov't Shutdown
- Ex Parte Order if Tenant Unlawfully Excluded
- Expungement (beginning 2022)

SOURCE OF FUNDS (ETC.)

§§ 2.2-3907, 36-96.1:1, 36-96.3

- As of July 1, 2020, a tenant additionally may not be discriminated against based on the source of funds, gender identity, sexual orientation, and status as a veteran.
- Prohibits unlawful discriminatory housing practices such as:
 - Refuse to rent or sell;
 - Discriminate against any person in the terms, conditions, or privileges of sale or rental;
 - Make, print, or publish any advertisement that indicates any preference or limitation;
 - Represent that a unit is not available for inspection, sale, or rental when it in fact is.

SURVIVORS OF DOMESTIC VIOLENCE

§ 55.1-1203(D)

- Landlords must consider evidence of a rental applicant's status as a victim of family abuse to mitigate any adverse effect of an otherwise qualified applicant's low credit score.

SURVIVORS OF DOMESTIC VIOLENCE

- Examples of evidence applicant may show:
 - Letter from a sexual and domestic violence program,
 - Letter from a housing counselor certified by the U.S. Department of Housing and Urban Development,
 - Letter from an attorney representing the applicant,
 - A law-enforcement incident report, or
 - A court order.
- Penalties for noncompliance:
 - Actual damages, including application fee and deposit
 - Attorney fees

STATEMENT OF TENANT'S RIGHTS AND RESPONSIBILITIES

§ 55.1-1204 & 55.1-1301

- All landlords must offer all prospective tenants a Statement of Tenant Rights and Responsibilities form as provided by the Virginia Dept of Housing and Community Development.
- Tenant must sign to confirm receipt.
- Landlord cannot maintain an eviction action until the TRR has been provided to tenant.
- Ideally this should be done at lease signing.



SECURITY DEPOSIT INSURANCE

§ 55.1-1204, 55.1-1226

- Prior to July 1, 2020, landlords could charge a security deposit of up to two months' rent.
- Now, landlords may allow tenants to provide **security deposit insurance** for all or part of the security deposit requirement. This could make it easier for tenants to move from one rental unit to another.



LATE FEES

§ 55.1-1204 (E)

- Landlords can only charge a late fee if provided for in the lease.
- Late fee capped at the lesser of 10% of the periodic rent or 10% of the total balance due (*whichever is lower*).
- **Reminder:** If Section 8 or other housing assistance pays a portion of the rent, landlord can only charge a tenant a late fee *if the tenant's portion of rent is late* and the late fee can only be charged as a % of **tenant's rental amount**.

TENANT'S REMEDY BY REPAIR

§ 55.1-1244.1-1

- If tenant needs a necessary repair done and can afford to pay for the repair up front, they can pay for some repairs out of pocket and then deduct the cost from the following months' rent.
 - A **necessary repair** is a serious repair such as a major appliance not working, no hot water, or significant plumbing leak.
- The maximum amount that can be deducted is either ***\$1,500*** or ***one month of rent, whichever is more.***

TENANT'S REMEDY BY REPAIR

§ 55.1-1244.1-1

- 1. Tenant must give landlord written notice of problem and intention to repair and deduct.
- 2. Wait 14 days for landlord to repair.
- 3. If landlord does not repair, tenant can hire a licensed contractor to make necessary repair.
- 4. After repair is made, tenant must give an itemized statement of the costs of the repair and the receipts for the work to landlord.
- 5. Then tenant can deduct the cost from next month's rent.

RELIEF FOR FEDERAL SHUTDOWN

§ 44-209

- A closing of the federal government for **14 or more days** triggers protections for federal employees, contractors for the federal government, and employees of a contractor for the federal government.
- If a landlord sues to evict for nonpayment of rent due *after the start of a federal shutdown*, the tenant not getting paid due to the shutdown can get the case continued for **60 days**. The tenant must come to court and give written proof of not getting paid due to the shutdown.

EX PARTE ORDER FOR UNLAWFUL EXCLUSION

§ 55.1-1243.1

- A judge may issue a preliminary order *ex parte* upon a finding that the petitioner has attempted to provide the landlord with actual notice of the hearing on the petition and a finding of good cause to do so.
- A full hearing must be held within **five days** of the issuance of the *ex parte* order.
- Prior to this, the tenant had to have the petition served (legally delivered) on the landlord to get court order.

EVICTION EXPUNGEMENT

§ 8.01-130.1

- Passed 2020 and took effect January 1, 2022, if an eviction action is **dismissed** or a **nonsuit** is taken, a tenant can file a petition to expunge the court records related to the unlawful detainer after six months.
- Upon finding that the unlawful detainer action was dismissed or a nonsuit was taken, the court shall, without a hearing, enter an order requiring expungement of the court record.

2021

- Statutory Damages for Unlawful Exclusion
- Extended Right of Redemption
- No Waiver of Rights under Civil Servicemembers Relief Act

STATUTORY DAMAGES FOR UNLAWFUL EXCLUSION

§ 55.1-1243.1

- 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).



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EXTENDED RIGHT OF REDEMPTION

§ 55.1-1250

- Tenants can now 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.
- Landlord must include clear language explaining the right of redemption in the pay or quit notice.
- Landlord must also give tenant exact amount needed to pay in order to cancel the eviction when tenant requests it.
- If tenant “redeems” the landlord 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.



EXTENDED RIGHT OF REDEMPTION

§ 55.1-1250

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.”



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NO WAIVER OF RIGHTS UNDER SERVICEMEMBER CIVIL RELIEF ACT

§ 55.1-1310



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



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2022

- Expungement (took effect)
- Rollback of temporary COVID laws
- End of RRP

2023

- More Time to Provide Itemization of Damages
- Tenant Termination for Uninhabitable Unit
- 60 Days Notice of Rent Increase
- Refusal to Sign Statement of Rights
- Pre-employment Criminal History Check for LLs
- 60 Day Notice for Mass Non-Renewal

ITEMIZATION OF DAMAGES

§ 55.1-1226(E)

- Increase from 15 to 30 days the additional time a landlord has to provide a tenant with an itemization of damages and the cost of repair.
- This applies when a deduction is made from a security deposit during the lease, the cost exceeds the security deposit, and requires a third-party contractor. The law expires June 30, 2024.

UNINHABITABLE UNIT

§ 55.1-1234.1

New law allowing tenants to terminate a lease with a full refund of all deposits and rent paid if the unit is uninhabitable upon move-in (if tenant delivers written notice of termination and meets other requirements).



UNINHABITABLE UNIT

§ 55.1-1234.1

Types of Conditions That Make a Unit Uninhabitable

1. Any condition that constitutes a fire hazard
2. Any condition that amounts to a serious threat to the life, health, or safety of tenants or occupants of the premises

Examples – Rodent or pest infestation, lack of heat, hot or cold running water, electricity, or adequate sewage disposal facilities

UNINHABITABLE UNIT

§ 55.1-1234.1

To Invoke Right of Termination - Tenant MUST

1. Provide Landlord Written Notice of Termination
2. Time Period: Within 7 Days of Delivery of Possession

To Refuse/Reject Termination – Landlord MUST

1. Provide Tenant Written Notice Rejecting Termination & Reason for Rejection
2. Time Period: Within 15 Business Days after Date Notice of Termination Delivered

To Contest Landlord's Rejection – Tenant MAY

1. File Lawsuit for Return of Deposit & Rent Paid
2. Prevailing Party Entitled to Reasonable Attorney Fees

60-DAY NOTICE TO INCREASE RENT

§ 55.1-1204(K)

- Landlord must provide written notice of rent increase **at least 60 days** prior to end of the lease term.
- Not applicable to Month-to-Month tenancy (30 days' notice required to increase rent for MTM tenancy)



STATEMENT OF TENANT'S RIGHTS AND RESPONSIBILITIES

HB 1736 / § 55.1-1204 & 55.1-1301

If Tenant Fails/Refuses to Sign the Statement of Tenant's Rights & Responsibilities Form, Landlord Must Record the Date(s) Form Was Provided to Tenant and the Fact that Tenant Failed/Refused to Sign.



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PRE-EMPLOYMENT CRIMINAL HISTORY CHECKS

§ 55.1-1209.1

- Landlord who owns more than 200 rental dwelling units on the same piece of real property must require a pre-employment criminal history record check. This applies to any applicant for employment who will have access to keys for each rental dwelling unit.



60 DAY NOTICE FOR MASS NON-RENEWAL

§ 55.1-1253(B)

- Any owner of multifamily premises must supply a **60 day** advance written notice of non-renewal. This applies when the owner fails to renew the greater of either 20 or more month-to-month tenancies or 50% of the month-to-month tenancies within a consecutive 30-day period in the same multifamily.



Part 3: FEDERAL CARES ACT

CARES ACT

§ Pub. L. No. 116-136, § 4024(c)(1)

- Section 4024 of the CARES Act states that the **lessor of a covered dwelling may not make or cause to be made a filing with a court to begin a legal proceeding to recover possession of a dwelling until a 30-day notice to vacate is provided to a lessee.**
- Only **AFTER** the 30-day time period has expired is the landlord permitted to initiate an action to recover possession of a dwelling covered by the CARES Act.
- Additionally, on July 28, 2021, the Federal Housing Finance Agency (FHFA) announced that tenants of multifamily properties with mortgages backed by Fannie Mae or Freddie Mac (the Enterprises) who are subject to eviction for nonpayment of rent must be given 30 days' notice to vacate before the tenant can be required to leave the unit. This requirement applies to all Enterprise-backed multifamily properties, regardless of whether the loan is in forbearance.



ALEXANDRIA PROPERTIES

SUBJECT TO CARES ACT

- 101 N Ripley Apartments
- 1111 Belle Pre Apartments
- 5 East Mason Ave
- Alexandria Station
- Annie B. Rose
- Arbelo Apartments
- Arlandria Chirilagua Coop
- Arrive 2801
- Arrive Alexandria
- Assembly Alexandria
- Bellefonte Apartments
- Bennington Crossing
- Beverly Park
- Braddock Lee Apartments
- Braddock-Whiting-Reynolds
- Brent Place
- Broadstone Van Dorn
- Brookdale
- Cameron Square
- Cameron Court
- Carydale East
- Chatham Square
- Claridge House
- Curve 6100
- Del Ray Central Apartments
- Eaton Square
- Elbert Avenue
- e-Lofts
- Envoy of Alexandria
- Foxchase
- Halstead Tower by Windsor
- James Bland
- Jackson Crossing
- Key Towers
- Lacy Court
- Ladrey
- Landmark Ridge Apartments
- London Park Towers
- Longview Terrace
- Lynbrook
- Lynhaven
- Manor House Apartments
- Mason Gardens of Alexandria
- Meridian at Braddock Station II
- Monticello-Lee Apartments
- Mt. Vernon Flats
- New Brookside
- Newport Village
- Notch 8
- Olde Towne West III
- ParcView
- Pendleton Park Apartments
- Potomac West
- Quaker Hill
- Samuel Madden
- Seminary Towers
- Southern Towers (The Monticello, The Ashlawn, The Graham, The Sherwood, and The Stratford)
- St. James Plaza
- Stoneridge
- Town Square at Mark Center
- The Alante
- The Asher
- The Bradley
- The Encore
- The Fields of Alexandria
- The Fields of Old Town
- The Fountains at Washington House
- The Heritage
- The Lineage
- The Mark
- The Nexus
- The Oliver
- The Porter Del Ray
- The Spire
- The Station at Potomac Yard
- The Summit
- The Thornton
- The Tuscany
- Whitestone at Landmark
- Willow Run

Part 4: FAIR HOUSING

WHAT IS FAIR HOUSING?

A set of laws that prohibits discrimination in housing against individuals based upon their membership in a protected class.

PROTECTED CLASSES

Definition: A protected class is a group of people who share a common characteristic and are protected by law from discrimination and harassment based upon that characteristic.

7 Federal Protected Classes (*meaning these are protected classes in every state and DC*):

- Race
- Color
- National origin
- Religion
- Disability
- Familial status
- Sex (including gender identity & sexual orientation)

FEDERAL PROTECTED CLASSES

- **Race:** Refers to those belonging to or having the physical characteristics of any racial group.
- **Color:** Refers to the visible color of one's skin.
- **National Origin:** Refers to where one is from or perceived to be from. This includes ancestry, ethnicity, birthplace, culture, and language.

FEDERAL PROTECTED CLASSES

- **Sex:** Refers to biological sex, sexual orientation, gender, gender identity, and gender expression. This also includes sexual harassment.
- **Religion:** Refers to both the practice and non-practice of religion.
- **Disability:** Refers to a physical or mental impairment that substantially limits one or more major life activity.
- **Familial Status:** Refers to parents or others having custody of a child or children under 18 years old.

VIRGINIA'S ADDITIONAL PROTECTED CLASSES

- **Elderliness:** Refers to individuals ages 55 and older.
- **Military Status:** Refers to those who served in the active military, naval, or air service, reserve components thereof, veterans, spouses and dependents of servicemembers, and those who were discharged or released under conditions other than dishonorable.
- **Source of Funds:** Refers to any lawful source of funds or income, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.
- **Gender Identity:** Refers to the gender-related identity, appearance, or gender-related characteristics of a person, regardless of the person's designated sex at birth.
- **Sexual Orientation:** Refers to a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

SURVIVORS OF DOMESTIC VIOLENCE

- The overwhelming majority of domestic violence survivors are women.
- As a result, they are protected by the federal Fair Housing Act's prohibition on sex discrimination.
- Therefore, policies and practices that target or otherwise discriminate against women because of their status as domestic violence survivors violate the federal Fair Housing Act.

Source: <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/fair-housing-and-domestic-violence/>

SOURCE OF FUNDS/INCOME

Background: SOF/I is a protected class in VA & MD. Even federally, “there’s been a lot of litigation claiming that excluding people based on their source of income is actually a form of racial, national origin, color, or disability discrimination that the FHA does ban. The typical contention is that rental policies that exclude vouchers, Social Security, and other forms of income other than wages have the effect of discriminating against FHA-protected groups that rely on these sources of income in disproportionate numbers.”

Source: <https://www.fairhousingcoach.com/article/source-income-discrimination-liability-risks-how-avoid-them>

SOURCE OF FUNDS/INCOME

Accept all forms of lawful funds, including:

- Wages
- Grants (gov't and private)
- Gifts
- Inheritance
- Retirement benefits
- Disability benefits
- Spousal/child support
- Unemployment benefits

SOURCE OF FUNDS/INCOME

Exceptions to the law in VA:

- The law does not apply if the source of funds is not approved within 15 days of submitted the request to approve the tenancy.
- Only applies to owners of more than 4 rental dwelling units or more than a 10% interest in more than 4 rental dwelling units.

SOURCE OF FUNDS/INCOME

Don't Impose Different Terms:

- Requiring a guarantor where applicant's funds are not wage-based
- Requiring a higher security deposit for applicants with certain forms of lawful funds
- Increasing base rent for Section 8 voucher holders
- Don't steer applicants away from the property based upon their source of funds
- Remove any advertisements that still indicate you do not accept Section 8 vouchers

SOURCE OF FUNDS/INCOME

Processing Applications:

- **Example 1:** Applicant's voucher covers the entire monthly rent. Applicant needs no further proof of income to qualify, and thus the screening criteria related to income qualification is not applicable.
- **Example 2:** Applicant's voucher covers \$800 per month where the dwelling unit's monthly rent is \$1000, thus making the applicant responsible for \$200 per month. Accordingly, the applicant must only present proof of additional funds/income for the applicant's portion of rent (\$200/month). If the screening criteria require that an applicant show proof of funds/income three times the monthly rent, then this applicant must only show proof of additional funds/income (in addition to the voucher) of \$600 per month. If the applicant can do so, then the applicant should pass the income qualification criteria.

CRIMINAL BACKGROUND

Background: ‘Criminals’ and/or ‘Criminal Background’ are not protected classes. However, policies prohibiting those with a criminal background may have a discriminatory effect on those who are members of a protected class(es).

“Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability). Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability).”

Source: HUD Guidance, April 4, 2016.

CRIMINAL BACKGROUND

“Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.”

Source: HUD Guidance, April 4, 2016.

CRIMINAL BACKGROUND

Disparate Impact - this occurs when policies, practices, rules, or other systems appear to be neutral but result in a disproportionate impact on a protected class (sometimes intentionally, sometimes unintentionally)

CRIMINAL BACKGROUND

Substantial, Legitimate, and Nondiscriminatory Interests:

- Resident safety
 - You can exclude a person who poses a “direct threat” to other tenants
- Protecting property
 - Of the landlord’s and of other residents
- Retaining other tenants who may be fearful and leave the community if a person with a criminal record is allowed to live at the community.

However, these are not without limitations...

CRIMINAL BACKGROUND

Not Substantial, Legitimate, or Nondiscriminatory Interest:

- Exclusion based upon arrest alone without conviction
- Exclusion based upon one's status as a victim/survivor of violence
- Blanket prohibition on anyone with any conviction - no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then

CRIMINAL BACKGROUND

Proper Use of Criminal Background Checks

- Landlords can require criminal background checks as part of the application process
- Require every applicant that passes the credit screening to undergo a criminal background check
- If a criminal conviction appears on the applicant's record, then consider how that conviction "would prevent the applicant from being a safe and reliable tenant."
 - Factors to consider:
 - Nature of the crime
 - How much time has passed since conviction
 - Rehabilitation efforts

Source: Home of VA, <https://homeofva.org/get-help/fair-housing/criminal-history/>

CRIMINAL BACKGROUND

Crimes by Current Residents

- These rules also apply when determining whether to evict a tenant for a criminal arrest or conviction
- *Example:* Data showing that Black individuals comprise 65% of community's tenants, but 95% of those evicted under a policy to evict based on an arrest indicates that the policy to evict for an arrest has a disproportionate impact on Black tenants.

QUESTIONS?