

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 55.1-1245, as it is currently effective and as it shall become effective, of the*
 3 *Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; landlord remedies;*
 4 *noncompliance with rental agreement.*

5 [S 812]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia is**
 9 **amended and reenacted as follows:**10 **§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19 pandemic**
 11 **state of emergency expires) Noncompliance with rental agreement; monetary penalty.**12 A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with
 13 the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may
 14 serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that
 15 the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is
 16 not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.17 B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant
 18 adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not
 19 terminate.20 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the
 21 tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will
 22 terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the
 23 contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or
 24 constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the
 25 landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises.
 26 For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined
 27 by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful
 28 act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of
 29 the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to
 30 terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise
 31 out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
 32 terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal
 33 or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a
 34 preponderance of the evidence. However, where the illegal drug activity or any activity that involves or
 35 constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized
 36 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities
 37 unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's
 38 action for immediate possession of the premises shall be held within 15 calendar days from the date of
 39 service on the tenant; however, the court shall order an earlier hearing when emergency conditions are
 40 alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other
 41 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial,
 42 the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such
 43 subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on
 44 the tenant. During the interim period between the date of the initial hearing and the date of any subsequent
 45 hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the
 46 interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by
 47 the court to hold either of the hearings within the time limits set out in this section shall not be a basis for
 48 dismissal of the case.49 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or
 50 on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of
 51 information provided by the tenant to the landlord, or by a protective order from a court of competent
 52 jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate
 53 solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i)
 54 the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse
 55 and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or
 56 (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails

57 to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the
58 premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual
59 knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the
60 landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later
61 than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for
62 the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is
63 subject to termination of the tenancy pursuant to the lease and this chapter.

64 E. If the tenant has been served with a prior written notice that required the tenant to remedy a breach, and
65 the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature
66 as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions
67 constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the
68 rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

69 F. If rent is unpaid when due, and the tenant fails to pay rent within ~~five~~ 14 days after written notice is
70 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental
71 agreement if the rent is not paid within the ~~five-day~~ 14-day period, the landlord may terminate the rental
72 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is
73 delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has
74 been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the
75 authorizing party, and the tenant fails to pay rent within ~~five~~ 14 days after written notice is served on him
76 notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the
77 rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the
78 ~~five-day~~ 14-day period, the landlord may terminate the rental agreement and proceed to obtain possession of
79 the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an
80 award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other
81 damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given
82 notice in accordance with § 55.1-1202, which notice may be included in the ~~five-day~~ 14-day termination
83 notice provided in accordance with this section.

84 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive
85 relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach
86 of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the
87 tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due
88 and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental
89 agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted
90 for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental
91 agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or
92 premises as contracted for in the rental agreement.

93 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
94 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
95 landlord and against the tenant for the relief requested, which may include the following: (i) rent due and
96 owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted
97 for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney
98 fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant
99 proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v)
100 costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to
101 the dwelling unit or premises.

102 I. 1. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more
103 than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall
104 not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely
105 on payment history or an eviction for nonpayment of rent that occurred during the period beginning on March
106 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the
107 Governor related to the COVID-19 pandemic.

108 2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant
109 written notice of the denial and of the applicant's right to assert that his failure to qualify was based upon
110 payment history or an eviction based on nonpayment of rent that occurred during the period beginning on
111 March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to
112 the COVID-19 pandemic. The written notice of denial shall include the statewide legal aid telephone number
113 and website address and shall inform the applicant that he must assert his right to challenge the denial within
114 seven days of the postmark date. If the landlord does not receive a response from the applicant within seven
115 days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord
116 provides notice to the applicant by electronic or telephonic means using an email address, telephone number,
117 or other contact information provided by the applicant informing the applicant of his denial and right to assert
118 that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that

119 occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or
 120 revocation of any state of emergency related to the COVID-19 pandemic and the tenant does not make such
 121 assertion that the failure to qualify was the result of such payment history or eviction prior to the close of
 122 business on the next business day, the landlord may proceed. The landlord must be able to validate the date
 123 and time that any communication sent by electronic or telephonic means was sent to the applicant. If a
 124 landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a
 125 consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the
 126 report to ascertain whether such determination was due solely to the applicant for tenancy's payment history
 127 or an eviction for nonpayment that occurred during the period beginning on March 12, 2020, and ending 30
 128 days after the expiration or revocation of any state of emergency declared by the Governor related to the
 129 COVID-19 pandemic. If the landlord does not receive a response from the generator of the report within three
 130 business days of requesting the information, the landlord may proceed with using the information from the
 131 report without additional action.

132 3. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may
 133 recover statutory damages of \$1,000, along with attorney fees.

134 **§ 55.1-1245. (Effective the later of July 1, 2028, or 7 years after the COVID-19 pandemic state of**
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