

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-107, 55.1-1208, and 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to public housing authorities; indigent parties; unlawful detainer.

[H 2415]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-107, 55.1-1208, and 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 16.1-107. Requirements for appeal.

A. No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Either such amount shall include the award of attorney fees, if any. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129. However, no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2. In a case where a defendant with indemnity coverage through a policy of liability insurance appeals, the bond required by this section shall not exceed the amount of the judgment that is covered by a policy of indemnity coverage.

B. In all civil cases, except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering of rents, no indigent person shall be required to post an appeal bond. In cases of unlawful detainer against a former owner based upon a foreclosure against that owner, a person who has been determined to be indigent pursuant to the guidelines set forth in § 19.2-159 shall post an appeal bond within 30 days from the date of judgment.

C. *Notwithstanding the provisions of subsection B, no indigent person shall be required to post a bond to appeal any unlawful detainer action brought by a public housing authority.*

D. In cases of unlawful detainer for a residential dwelling unit, notwithstanding the provisions of § 8.01-129, an appeal bond shall be posted by the defendant with payment into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. If such amount is not so paid, any such appeal shall not be perfected as a matter of law. Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court. Any funds held in a court account shall be released to the plaintiff without further hearing or proceeding of the court unless the defendant has filed a motion to retain some or all of such funds and the court, after a hearing, enters an order finding that the defendant is likely to succeed on the merits of a counterclaim alleging money damages against the plaintiff, in which case funds shall be held by order of such court.

~~D. E.~~ E. If such bond is furnished by or on behalf of any party against whom judgment has been rendered for money or property or both, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against such party on appeal, and for the payment of all costs and damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery except for costs, the bond shall be conditioned for the payment of such costs and damages as may be awarded against him on the appeal.

E. F. In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.

57 *G. For purposes of this section, "indigent" means that the defendant has been determined to be indigent*
 58 *pursuant to the guidelines set forth in § 19.2-159.*

59 **§ 55.1-1208. Prohibited provisions in rental agreements.**

60 A. A rental agreement shall not contain provisions that the tenant:

- 61 1. Agrees to waive or forgo rights or remedies under this chapter;
- 62 2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation
 63 notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate
 64 Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;
- 65 3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
- 66 4. Agrees to pay the landlord's attorney fees except as provided in this chapter;
- 67 5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or
 68 to indemnify the landlord for that liability or any associated costs;
- 69 6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful
 70 possession of a firearm within individual dwelling units unless required by federal law or regulation;
- 71 7. Agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance
 72 premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two
 73 months' periodic rent; or
- 74 8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et
 75 seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be
 76 contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act; however,
 77 upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies
 78 as to that dispute in order to facilitate a resolution.

79 B. Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a
 80 landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by
 81 him and reasonable attorney fees.

82 *C. If the landlord is a public housing authority, the landlord shall not require a tenant to pay any fee for*
 83 *the maintenance or repair of any dwelling unit unless the repair is necessitated by the tenant's action or*
 84 *omission.*

85 **§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19 pandemic**
 86 **state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

87 A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with
 88 the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may
 89 serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that
 90 the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is
 91 not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

92 B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant
 93 adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not
 94 terminate.

95 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the
 96 tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will
 97 terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the
 98 contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or
 99 constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the
 100 landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises.
 101 For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined
 102 by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful
 103 act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of
 104 the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to
 105 terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise
 106 out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
 107 terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal
 108 or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a
 109 preponderance of the evidence. However, where the illegal drug activity or any activity that involves or
 110 constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized
 111 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities
 112 unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's
 113 action for immediate possession of the premises shall be held within 15 calendar days from the date of
 114 service on the tenant; however, the court shall order an earlier hearing when emergency conditions are
 115 alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other
 116 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial,
 117 the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such
 118 subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on

the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

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

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

G. If a public housing authority issues a notice of nonpayment of rent to a tenant, such public housing authority shall also provide to the tenant along with the notice of nonpayment written information printed on pink or orange paper explaining how the tenant may recertify the tenant's income, including how the tenant can, in accordance with federal law and policy, report changes in income, request a minimum rent hardship exemption, and file grievances. Such information shall be posted by the public housing authority in conspicuous locations in each public housing community under its authority.

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

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

costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

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

2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic and the tenant does not make such assertion that the failure to qualify was the result of such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic. If the landlord does not receive a response from the generator of the report within three business days of requesting the information, the landlord may proceed with using the information from the report without additional action.

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

§ 55.1-1245. (Effective the later of July 1, 2028, or 7 years after the COVID-19 pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's

action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

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

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

G. *If a public housing authority issues a notice of nonpayment of rent to a tenant, such public housing authority shall also provide to the tenant along with the notice of nonpayment written information printed on pink or orange paper explaining how the tenant may recertify the tenant's income, including how the tenant can, in accordance with federal law and policy, report changes in income, request a minimum rent hardship exemption, and file grievances. Such information shall be posted by the public housing authority in conspicuous locations in each public housing community under its authority.*

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

I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or

305 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
306 landlord and against the tenant for the relief requested, which may include the following: (i) rent due and
307 owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted
308 for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney
309 fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant
310 proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v)
311 costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to
312 the dwelling unit or premises.