

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[H 95]

Approved

Be it enacted by the General Assembly of Virginia:
1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1245. (Effective until the later of July 1, 2028, or seven 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

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 days after written notice is served
 70 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 period, the landlord may terminate the rental agreement
 72 and proceed to obtain possession of the premises as provided in § 55.1-1251.

73 *G. Notwithstanding the provisions of subsection F, for any landlord who owns more than four rental
 74 dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether
 75 individually or through a business entity, in the Commonwealth, if rent is unpaid when due and the exact
 76 amount of rent owed is less than or equal to one month's rent plus any late charges contracted for in the
 77 rental agreement and as provided by law, the landlord shall serve upon the tenant a written notice informing
 78 the tenant of the exact amount due and owed. The written notice shall also offer the tenant a payment plan
 79 under which the tenant shall be required to pay the exact amount due and owed in equal monthly installments
 80 over a period of the lesser of six months or the time remaining under the rental agreement; however, the
 81 tenant may repay the full balance due and owed at any time during the payment plan period without
 82 incurring a penalty. The landlord shall not charge any additional late fees during the payment plan period in
 83 connection with the unpaid rental amount for which the tenant entered into the payment plan so long as the
 84 tenant makes timely payments in accordance with the terms of the payment plan. The written notice shall also
 85 inform the tenant that if the tenant fails to either pay the exact amount due and owed or enter into the
 86 payment plan offered within 14 days of receiving the written notice from the landlord, the landlord may
 87 terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251.
 88 If the tenant fails to pay in full or enter into a payment plan with the landlord within 14 days of when the
 89 notice is served on him, the landlord may terminate the rental agreement and proceed to obtain possession of
 90 the premises as provided in § 55.1-1251. If the tenant enters into a payment plan and after the plan becomes
 91 effective, such tenant's rent is unpaid when due, or a payment under the terms of the payment plan is unpaid
 92 when due, the landlord may terminate the rental agreement and proceed to obtain possession of the premises
 93 as provided in § 55.1-1251, provided that he sends the tenant a new written notice advising the tenant that
 94 the rental agreement will terminate unless the tenant pays the exact amount due and owed as stated on the
 95 notice within 14 days of receipt. A landlord shall only be required to offer a payment plan pursuant to this
 96 subsection once during the term of the rental agreement.*

97 H. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an
 98 electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been
 99 placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written
 100 notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the
 101 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic
 102 funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to
 103 obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a
 104 landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under
 105 § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126,
 106 provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in
 107 the five-day termination notice provided in accordance with this section.

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

114 ~~H. J.~~ Except as otherwise provided in this chapter, the landlord may recover damages and obtain
 115 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event
 116 of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover
 117 from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i)
 118 rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in

119 the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as
 120 contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in
 121 the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the
 122 dwelling unit or premises as contracted for in the rental agreement.

123 *F. K.* In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
 124 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
 125 landlord and against the tenant for the relief requested, which may include the following: (i) rent due and
 126 owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted
 127 for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney
 128 fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant
 129 proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v)
 130 costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to
 131 the dwelling unit or premises.

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

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

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

164 **§ 55.1-1245. (Effective the later of July 1, 2028, or seven years after the COVID-19 pandemic state**
 165 **of emergency expires) Noncompliance with rental agreement; monetary penalty.**

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

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

174 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the
 175 tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will
 176 terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the
 177 contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or
 178 constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the
 179 landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises.
 180 For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined

181 by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful
182 act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of
183 the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to
184 terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise
185 out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
186 terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal
187 or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a
188 preponderance of the evidence. However, where the illegal drug activity or any activity that involves or
189 constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized
190 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities
191 unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's
192 action for immediate possession of the premises shall be held within 15 calendar days from the date of
193 service on the tenant; however, the court shall order an earlier hearing when emergency conditions are
194 alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other
195 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial,
196 the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such
197 subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on
198 the tenant. During the interim period between the date of the initial hearing and the date of any subsequent
199 hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the
200 interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by
201 the court to hold either of the hearings within the time limits set out in this section shall not be a basis for
202 dismissal of the case.

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

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

223 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served
224 on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental
225 agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement
226 and proceed to obtain possession of the premises as provided in § 55.1-1251.

227 *G. Notwithstanding the provisions of subsection F, for any landlord who owns more than four rental*
228 *dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether*
229 *individually or through a business entity, in the Commonwealth, if rent is unpaid when due and the exact*
230 *amount of rent owed is less than or equal to one month's rent plus any late charges contracted for in the*
231 *rental agreement and as provided by law, the landlord shall serve upon the tenant a written notice informing*
232 *the tenant of the exact amount due and owed. The written notice shall also offer the tenant a payment plan*
233 *under which the tenant shall be required to pay the exact amount due and owed in equal monthly installments*
234 *over a period of the lesser of six months or the time remaining under the rental agreement; however, the*
235 *tenant may repay the full balance due and owed at any time during the payment plan period without*
236 *incurring a penalty. The landlord shall not charge any additional late fees during the payment plan period in*
237 *connection with the unpaid rental amount for which the tenant entered into the payment plan so long as the*
238 *tenant makes timely payments in accordance with the terms of the payment plan. The written notice shall also*
239 *inform the tenant that if the tenant fails to either pay the exact amount due and owed or enter into the*
240 *payment plan offered within 14 days of receiving the written notice from the landlord, the landlord may*
241 *terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251.*
242 *If the tenant fails to pay in full or enter into a payment plan with the landlord within 14 days of when the*

243 *notice is served on him, the landlord may terminate the rental agreement and proceed to obtain possession of*
 244 *the premises as provided in § 55.1-1251. If the tenant enters into a payment plan and after the plan becomes*
 245 *effective, such tenant's rent is unpaid when due, or a payment under the terms of the payment plan is unpaid*
 246 *when due, the landlord may terminate the rental agreement and proceed to obtain possession of the premises*
 247 *as provided in § 55.1-1251, provided that he send the tenant a new written notice advising the tenant that the*
 248 *rental agreement will terminate unless the tenant pays the exact amount due and owed as stated on the notice*
 249 *within 14 days of receipt. A landlord shall only be required to offer a payment plan pursuant to this*
 250 *subsection once during the term of the rental agreement.*

251 *H. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an*
 252 *electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been*
 253 *placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written*
 254 *notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the*
 255 *rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic*
 256 *funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to*
 257 *obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a*
 258 *landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under*
 259 *§ 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126,*
 260 *provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in*
 261 *the five-day termination notice provided in accordance with this section.*

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

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

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

286 **2. That the provisions of this act shall become effective on July 1, 2027.**

287 **3. That the Department of Housing and Community Development (the Department) shall develop a**
 288 **sample payment plan for use by landlords when offering a payment plan pursuant to subsection G of**
 289 **§ 55.1-1245 of the Code of Virginia, as amended by this act. The Department shall maintain such**
 290 **sample payment plan, in at least 14-point type, on the Department's website.**