UNDERSTANDING
RENTAL AGREEMENTS

Reduce Your Risk. Protect Your Clients.

Bring Your Questions!

Get Answers from Virginia's Leading Authority on Landlord-Tenant Issues.

SEMINAR OUTLINE

VIRGINIA LANDLORD PROPERTY MANAGEMENT WEBSITE/BROCHURE

FUTURELAW PROPERTY MANGEMENT TEAM

JOHN G. "CHIP" DICKS

Chip Dicks is a principal and founder of FutureLaw, LLC, a cutting edge law firm headquartered in Richmond, Virginia. Chip is a seasoned attorney with 30 years of experience in business, real estate, zoning and land use work. He works closely with clients to identify and refine strategic goals and establish an implementation plan that meets the client's goals and timelines. Chip's creative approaches and his diligence have earned him a reputation as an attorney who achieves successful outcomes for his clients. For more information, please see www.futurelaw.net.

Chip is a principal and President of Capital Realty & Investment Company, LLC, a real estate investment company with investments in raw land, multifamily and office buildings. In that capacity, Chip has been directly involved in development of real estate projects from the ground up to the point of completion and operation, management of major office buildings, including making all strategic and purchasing decisions. He is also experienced in implementing complex bond transactions as an exit strategy in the niche of government- leased buildings. For more information, please see www.capitalric.net.

In the governmental arena, Chip served in the Virginia House of Delegates from 1983 through 1989, where he was a member of the Virginia Housing Study Commission. He possesses the institutional knowledge on real estate issues in the Virginia General Assembly and, for more than 30 years, has been the principal author of real estate- related legislation in Virginia. Chip represents other interests in the General Assembly, including telephony, technology, outdoor advertising, solar energy and other varied companies and organizations.

Chip was named Outstanding Young Virginian by the Virginia Jaycees and received the Distinguished Alumnus Award from Methodist College. He has served in various leadership capacities of numerous charitable, civic and professional organizations. Chip lives in Richmond with his wife, Sarah, and has a grown daughter, Brooke, who is married and lives with her husband Stuart and their daughters, Emma and Penelope.

Chip can be reached by phone at 804.225.5507 and by e-mail at chipdicks@futurelaw.net.

BARRIE B. BOWERS

Barrie Bowers is an attorney at FutureLaw, L.L.C., a cutting edge law firm headquartered in Richmond, Virginia. Barrie has more than 20 years of experience in real estate and business law. Her diligent approach from the beginning to end of any project helps maintain a focus on the finish line, while anticipating and attending to the details of the project along the way.

Barrie's previous in-house experience with a major apartment real estate investment trust equips her with a keen understanding of the needs of real estate and other companies. She is adept at working within a corporate environment to define problems, identify solutions and implement those solutions effectively to conclusion.

As head of FutureLaw's Property Management Team, Barrie works extensively with the firm's property management clients on a full array of landlord-tenant issues, from drafting forms and policies, to addressing resident disputes, to handling reasonable accommodation requests, and representing clients with claims before the Real Estate and Fair Housing Boards.

Barrie also has experience negotiating contracts with providers of voice, data and video, including cable and telephone companies. For real estate clients, Barrie regularly handles sales, acquisition and other property transactions, ranging from easements to single asset purchases to portfolio transactions. For more information, please visit www.futurelaw.net.

Barrie is active and has held leadership roles in various community and civic organizations, particularly in her local schools. Barrie can be reached at 804.726.2402 and by e-mail at bbowers@futurelaw.net.

TIMOTHY S. REINIGER

Tim came to FutureLaw from the National Notary Association where he served as Executive Director for six years. In this role, he became a nationally recognized expert on the notary office and successfully advocated for path-breaking electronic notarization laws in Delaware, Virginia, North Carolina, Florida, New Mexico and Minnesota. He has frequently testified before the U.S. House Judiciary Committee, the California House and Senate Judiciary Committees, the Florida Senate Judiciary Committee and the Hague Conference on Private International Law, as well as several state e-recording commissions. In addition, Tim has contributed a chapter on electronic notarization to the 2008 American Bar Association book *Foundations of Digital Evidence.*

Before joining the National Notary Association, Tim practiced law in Manchester, NH where he also served three terms on the Board of Mayor and Aldermen (1994-2000). He is a licensed attorney in both New Hampshire and California. Tim earned his J.D. from the University of Michigan Law School and holds a B.S.F.S., cum laude, in International Affairs from Georgetown University School of Foreign Service.

Tim directs the FutureLaw Digital Services Consulting Group and can be reached at 804.525.2294 or by e-mail at treiniger@futurelaw.net.

ANN H. MINK

Ann H. Mink is a real estate and zoning consultant who has provided representation of real estate and development clients for more than 20 years. Ann has substantial experience with all aspects of real estate, land use, development and construction. Ann's background in the title, survey and construction industries, in addition to being an active Realtor®, gives her a practical perspective that is vitally important in real estate deals.

Ann can be reached by phone at 804.440.1655 and by e-mail at amink@futurelaw.net.

Printer Friendly - PDF

Services - Page 1 - Page 2

The FutureLaw Landlord Property Management Team brings a full array of legal skills and decades of experience in providing advice to landlords and property managers on a broad scope of property management and landlord-tenant issues, defending and resolving state and federal fair housing claims, and advising on labor and employment issues.

We believe that the proactive approach of establishing strong policies, procedures and forms at the outset is the best way to avoid legal problems down the road. However, should questions or problems arise, our attorneys can help you address the issue all the way from the initial consultation, up to and including defending you against any claims for liability, and enforcing any and all rights and remedies you may have under any insurance policies.

FutureLaw Property Management Services include:

I. Flat-Fee Retainer for General Advice/ Hourly Billing

FutureLaw maintains relationships on a retainer basis with many of its property management clients for general consultation and advice on an ongoing basis. This allows landlords to budget a fixed amount for their annual legal expenses. The arrangement also permits our attorneys to proactively help landlords avoid problems to the maximum extent possible, and to effectively resolve issues should they arise. Depending on a client's needs and preferences, any or all of the above services, such as lease preparation or training, can be incorporated into the retainer relationship, with legal costs to be spread evenly throughout the year. FutureLaw can also provide hourly rates upon request for representation.

II. Training

Lease and Forms:
Individualized training on new or updated leases, other forms, and/or risk mitigation areas.

Landlord-Tenant Law:
FutureLaw is licensed as a real estate school, has approved courses for continuing education for real estate licensees and has licensed real estate instructors.

Fair Housing:
FutureLaw is licensed as a fair housing school, has approved fair housing courses and has licensed fair housing instructors.

Click here for our Property Management Team Members.

III. General Property Management Services

Advise clients on all types of property management matters, including: routine landlord-tenant questions, managing agent issues, fair housing concerns, reasonable accommodation and accessibility issues, lease questions, mold and other property conditions, and all kinds of landlord policies and procedures.

IV. Lease and Forms

New Lease, process to include:

- Initial consultation to discuss Lease provisions
- Prepare draft of Lease
- Revise Lease after client review
- Discuss revisions with client
- Put Lease into final form

Lease Addenda, as applicable

- Mold Addendum
- Damage Addendum
- Concession Addendum
- Roommate Addendum
- Pet Addendum
- Submetering Addendum
- Airport Noise Addendum

FutureLaw will also provide:

- Annual update of existing Lease on FutureLaw form
- Prepare new lease or update existing lease using Futurelaw or client form

For more information contact Barrie B. Bowers (804) 726-2402 or bbowers@futurelaw.net

Services - Page 1 - Page 2

Printer Friendly - PDF

V. Other Forms

Procedures manual for court work:

- Rental selection criteria
- Move-in inspection form
- Tenant consent form
- Lead-based paint acknowledgement
- Military waiver
- Satellite dish policy
- Employee occupancy license
- Rules and regulations

Rental Applications, including:

- Supplemental application regarding citizenship
- Statement regarding disposition of application deposits

Tenant Notices and Forms:

- Lease violation notices
  - Termination notices
  - End of term
  - Early termination
  - Casualty damage
  - Military
- Abandoned property notice
- Notice upon death of a tenant
- Reasonable accommodation policy and request form
- Foreclosure package

VI. Risk Mitigation

Mold Risk Mitigation Package:
Mold risk mitigation package is especially critical as multiple safe harbors exist for the benefit of landlords to protect them against mold liability. However, if the landlord fails to take advantage of such safe harbors, insurance coverage for mold issues is generally not available, thus exposing the landlord to potentially catastrophic damages.

Lead-based paint risk mitigation package

Premises liability

VII. Audits

DPOR audit for compliance with real estate licensing regulations

Insurance audit, focusing on potential gaps in coverage's and exclusions.

VIII. Administrative Proceedings

Represent and defend clients against claims before the fair housing board, real estate board and other regulatory boards and commissions, as applicable.

IX. Litigation

Represent and defend landlord and property manager clients against any property management-related claims, such as fair housing, mold, lead-based paint and premises liability.

Represent clients to determine the existence and extent of any insurance coverage, as well as assisting clients with filing proper claims in order to protect the clients' rights under its policies of insurance. If necessary, FutureLaw can seek judicial enforcement of its clients' rights under its insurance policies, as well as seeking any damages to which the client is entitled.

X. Telecommunications

Coordinate Request for Proposal process for solicitation of telecommunications vendor(s) for provision of television, voice and internet services.

Draft and negotiate provider agreements and licenses.

Provide general advice regarding cable and other Federal Communications Commission rules and regulations.

XI. Digital Services

Working with FutureLaw's Digital Services Group, provide advice on the legality of electronic signatures, the duties regarding collecting and protecting information obtained by electronic means and other related technology issues, and develop on-line and website policies, including:

- Website terms and conditions and privacy policies
- On-line Rental Applications
- On-line Rental Payment policies

Click here for our Property Management Team Members

For more information contact Barrie B. Bowers (804) 726-2402 or bbowers@futurelaw.net

VIRGINIA LANDLORD TENANT ACT

Title 55 – Property and Conveyances
Chapter 13 –Landlord and Tenant

55-248.21	Noncompliance by landlord.
55-248.21:1	Early termination of rental agreement by military personnel.
55-248.21:2	Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.
55-248.22	Failure to deliver possession.
55-248.23	Wrongful failure to supply heat, water, not water or essential services.
55-248.24	Fire or casualty damage.
55-248.25	Landlord's noncompliance as defense to action for possession for nonpayment of rent.
55-248.25:1	Rent escrow required for continuance of tenant's case.
55-248.26	Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of service.
55-248.27	Tenant's assertion; rent escrow.
55-248.28 through 55-248.30	Repealed by Acts 2000, c. 760, cl.2.
55-248.31	Noncompliance with rental agreement; monetary penalty.
55-248.31:01	Barring guest or invitee of tenants.
55-248.31:1	Sheriffs authorized to serve certain notices; fees therefor.
55-248.32	Remedy by repair, etc.; emergencies.
55-248.33	Remedies for absence, nonuse and abandonment.
55-248.34	Repealed by Acts 2003, c. 427, cl. 2.
55-248.34:1	Landlord's acceptance of rent with reservation.
55-248.35	Remedy after termination.
55-248.36	Recovery of possession limited.
55-248.37	Periodic tenancy; holdover remedies.
55-248.38	Repealed by Acts 2000, c. 760, cl. 2.
55-248.38:1	Disposal of property abandoned by tenants.
55-248.38:2	Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.
55-248.38:3	Disposal of property of deceased tenants.
55-248.39	Retaliatory conduct prohibited.
55-248.40	Actions to enforce chapter.

§ 55-217. Grantees and assignees to have same rights against lessees as lessors, etc. -- A grantee or assignee of any land let to lease, or of the reversion thereof, and his heirs, personal representative or assigns shall enjoy against the lessee, his personal representative or assigns, the like advantage, by action or entry for any forfeiture or by action upon any covenant or promise in the lease, which the grantor, assignor or lessor, or his heirs, might have enjoyed. (Code 1919, § 5512.)

§ 55-218. Lessees, etc., to have same rights against grantees, etc., as against lessors. -- A lessee, his personal representative or assigns may have against a grantee or alienee of the reversion, or of any part thereof, his heirs or assigns, the like benefit of any condition, covenant or promise in the lease as he could have had against the lessors themselves and their heirs and assigns, except the benefit of any warranty, in deed or law. (Code 1919, § 5513.)

§ 55-218.1. Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth. -- Any nonresident person as the term "person" is defined in § 55-248.4 of this title of the Commonwealth who owns and leases residential or commercial real property consisting of four or more units within a county or city in the Commonwealth shall have and continuously maintain an agent who is a resident and maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon such property owner.

Whenever any nonresident property owner fails to appoint or maintain an agent, as required herein, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth shall be an agent of the nonresident property owner upon whom may be served any process, notice, order or demand. Service may be made on the Secretary or any of his staff at his office who shall forthwith cause it to be sent by registered or certified mail addressed to the property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The name and office address of the agent appointed as provided herein shall be filed in the office of the clerk of the court in which deeds are recorded in the county or city wherein the property lies. Recordation shall be in the same book as certificates of fictitious names are recorded as provided by § 59.1-74 for which the clerk shall be entitled to a fee of $10.

No nonresident property owner shall maintain an action in the courts of the Commonwealth concerning property for which a designation is required hereunder until such designation has been filed. (1973, c. 301; 1987, c. 360; 2006, c. 318; 2008, c. 119.)

§ 55-219. Apportionment on purchase of part of land by holder of rent, etc. -- When the holder of a rent shall purchase part of the land out of which the same issues, the rent shall be apportioned in like manner as if the land had come to him by descent; and when the holder of land, being part of land out of which a rent shall be issuing, shall purchase such rent or part thereof, the rent so purchased shall be apportioned as aforesaid. (Code 1919, § 5547.)

§ 55-220. What powers to pass to grantee or devisee; when attornment unnecessary. -- In conveyances or devises of rents in fee, with powers of distress and reentry, or either of them, such powers shall pass to the grantee or devisee without express words. A grant or devise of a rent, or of a reversion or remainder, shall be good and effectual without attornment of the tenant; but no tenant who, before notice of the grant, shall have paid the rent to the grantor shall suffer any damage thereby. (Code 1919, § 5514.)

§ 55-220.1. Perfection of lien or interest in leases, rents and profits. -- The recordation pursuant to § 55-106, in the county or city in which the real property is located, of any deed, deed of trust or other instrument granting, transferring or assigning the interest of the grantor, transferor, assignor, pledgor or lessor in leases, rents or profits arising from the real property described in such deed, deed of trust or other instrument, shall fully perfect the interest of the grantee, transferee, pledgee or assignee as to the assignor and all third parties without the necessity of (i) furnishing notice to the assignor or lessee, (ii) obtaining possession of the real property, (iii) impounding the rents, (iv) securing the appointment of a receiver, or (v) taking any other affirmative action. The lessee is authorized to pay the assignor until the lessee receives written notification that rents due or to become due have been assigned and that payment is to be made to the assignee. This section shall apply to all instruments of record before, on or after July 1, 1992. (1992, c. 67; 1993, c. 427.)

§ 55-221. When attornment void. -- The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant or pursuant to or in consequence of the judgment, order or decree of a court. (Code 1919, § 5515.)

§ 55-221.1. Community land trusts not considered landlords. -- For the purposes of this chapter, the term "landlord" shall not include a community land trust. "Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of lessees, corporate members who are not lessees, and any other category of persons specified in the bylaws of the organization and that:
1. Is not sponsored by a for-profit organization;
2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
3. Transfers ownership of any structural improvements located on such leased parcels to the lessee; and
4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity. (2010, c. 180.)

§ 55-222. Notice to terminate a tenancy; on whom served; when necessary. -- A. A tenancy from year to year may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A tenancy from month to month may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate the same, unless the rental agreement provides for a different notice period. Written notice of termination shall be given in accordance with this chapter or the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), as applicable.

B. In addition to the termination rights set forth in subsection A, and notwithstanding the terms of the lease, the landlord may terminate the lease due to rehabilitation or a change in the use of all or any part of a building containing at least four residential units, upon 120 days' prior written notice to the tenant. Changes in use shall include but not be limited to conversion to hotel, motel, apartment hotel or other commercial use, planned unit development, substantial rehabilitation, demolition or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived except in the case of a tenancy from month to month, which may be terminated by the landlord by giving the tenant 30 days' written notice prior to the next rent due date of the landlord's intention to terminate the tenancy.
The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing. Code 1919, § 5516; 1981, c. 155; 1986, c. 428; 1987, c. 473; 2004, c. 123; 2007, c. 634; 2013, c. 563; 2015, c. 596.

§ 55-222.1. Repealed by Acts 1974, c. 680.

§ 55-223. Effect of failure of tenant to vacate premises at expiration of term. -- A tenant from year to year, month to month, or other definite term, shall not, by his mere failure to vacate the premises upon the expiration of the lease, be held as tenant for another term when such failure is not due to his willfulness, negligence or other avoidable cause, but such tenant shall be liable to the lessor for use and occupation of the premises and also for any loss or damage sustained by the lessor because of such failure to surrender possession at the time stipulated. (Code 1919, § 5517.)

§ 55-224. When tenant deserts premises, how landlord may enter, etc. -- If any tenant from whom rent is in arrear and unpaid shall desert the demised premises and leave the same uncultivated or unoccupied, without goods thereon subject to distress sufficient to satisfy the rent, the lessor or his agent may post a notice, in writing, upon a conspicuous part of the premises requiring the tenant to pay the rent, in the case of a monthly tenant within ten days, and in the case of a yearly tenant within one month from the date of such notice. If the same be not paid within the time specified in the notice, the lessor shall be entitled to possession of the premises and may enter thereon and the right of such tenant thereto shall thenceforth be at an end; but the landlord may recover the rent up to that time. (Code 1919, § 5518.)

§ 55-225. Failure to pay certain rents after five days' notice forfeits right of possession. -- If any tenant or lessee of premises in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, being in default in the payment of rent, shall so continue for five days after notice, in writing, requiring possession of the premises or the payment of rent, such tenant or lessee shall thereby forfeit his right to the possession. In such case the possession of the defendant may, at the option of the landlord or lessor, be deemed unlawful, and he may proceed to recover in the same manner provided by Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01.
Nothing, however, shall be construed to prohibit a landlord from seeking an award of costs or attorney's fees under § 8.01-27.1 or civil recovery under § 8.01-27.2 as part of the damages requested on an unlawful detainer action filed pursuant to § 8.01-126 provided the landlord has given notice, which notice may be included in a five-day termination notice provided in accordance with this section. (Code 1919, § 5448; 2008, c. 489.)

§ 55-225.1. Recovery of possession limited. -- A landlord may not recover or take possession of a residential dwelling unit by (i) willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service required to be supplied by the landlord under a rental agreement or (ii) refusal to permit the tenant access to such unit unless such refusal is pursuant to an unlawful detainer action from a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto. A provision included in a rental agreement for a dwelling unit authorizing action prohibited by this section is unenforceable. (1994, c. 583; 2012, c. 705.)

§ 55-225.2. Remedies for landlord's unlawful ouster, exclusion or diminution of service. -- If a landlord unlawfully removes or excludes a tenant from residential premises or willfully diminishes services to a residential tenant by interrupting or causing the interruption of gas, water, or other essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted utility service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and reasonable attorney fees. If the rental agreement is terminated pursuant to this section, the landlord shall return all security given by such tenant. (1994, c. 583; 2013, c. 110.)

§ 55-225.3. Landlord to maintain dwelling unit. -- A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
4. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and
5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold and to promptly respond to any notices as provided in subdivision A 8 of § 55-225.4.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall be liable only for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 2, 3, and 4 and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord. (2001, c. 524; 2008, cc. 489, 640.)

§ 55-225.4. Tenant to maintain dwelling unit. -- A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;
6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative, and shall maintain such smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);
8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;
9. Not paint or disturb painted surfaces, or make alterations in the dwelling unit, without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;
10. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and
11. Abide by all reasonable rules and regulations imposed by the landlord.
B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1. (2001, c. 524; 2008, c. 640; 2011, c. 766.)

§ 55-225.5. Access following entry of certain court orders. -- A. A tenant who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant to do so, provided:
1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and
2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.
Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.
C. This section shall not apply when the court order excluding a person was issued ex parte. (2005, cc. 735, 825.)

§ 55-225.6. Inspection of dwelling unit. -- The landlord may, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct. (2008, c. 640.)

§ 55-225.7. Disclosure of mold in dwelling units. -- As part of the written report of the move-in inspection pursuant to § 55-225.6, the landlord may disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection. (2008, c. 640.)

§ 55-225.8. Residential dwelling units subject to this chapter; definitions; exceptions; application to certain occupants. -- A. As used in this chapter, the following definitions apply:
"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.
"Dwelling unit" or "residential dwelling unit" means a single-family residence where one or more persons maintain a household, including a manufactured home. Dwelling unit or residential dwelling unit shall not include:
1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;
2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
3. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;

4. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
5. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial, or agricultural purposes; and
6. Occupancy in a campground as defined in § 35.1-1.
"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.
"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.
"Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.
"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.
"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.
"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.
"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.
"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.
"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.
For any term not expressly defined herein, terms shall have the same meaning as those defined in § 55-248.4.

B. No guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging shall be construed to be a tenant living in a dwelling unit as defined in this section if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter and the innkeeper or property owner, or agent thereof, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto, which would otherwise be required under this chapter. For purposes of this chapter, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be treated as a dwelling unit and be subject to the provisions of this chapter. 2008, c. 640; 2012, cc. 705, 788; 2013, cc. 279, 712; 2015, c. 394.

§ 55-225.9. Relocation of tenant where mold remediation needs to be performed in the dwelling unit. -- Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-225.8 for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § 55-225.8. The landlord shall pay all costs of the mold remediation, unless the tenant is at fault for the mold condition. (2008, c. 640; 2011, c. 779.)

§ 55-225.10. Notice to tenant in event of foreclosure. -- A. The landlord of a dwelling unit subject to this chapter shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.
C. If the dwelling unit is foreclosed upon and there is a tenant lawfully residing in the dwelling unit on the date of foreclosure, the tenant may remain in such dwelling unit as a tenant only pursuant to the Protecting Tenants at Foreclosure Act, P.L. No. 111-22, § 702, 123 Stat. 1632, 1660 (2009), and provided the tenant remains in compliance with all of the terms and conditions of the lease agreement, including payment of rent. (2009, c. 663; 2011, c. 530; 2012, c. 788.)

§ 55-225.11. Required disclosures for properties with defective drywall; remedy for nondisclosure. -- A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.
B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement. (2011, cc. 34, 46.)

§ 55-225.12. Tenant's assertion; rent escrow; dwelling units. -- A. The tenant may assert that there exists upon the dwelling unit, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or a lack of light, electricity or adequate sewage disposal facilities; or an infestation of rodents; or the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the dwelling unit is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection C.
B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:
1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left

to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable;
2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; and
3. It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the dwelling unit for the purpose of correcting such conditions.
C. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:
1. Terminating the rental agreement or ordering the dwelling unit surrendered to the landlord;
2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;
3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;
4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;
5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;
6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rent payments within five days of the date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;
7. In the court's discretion, ordering escrow funds disbursed to pay a mortgage on the property upon which the dwelling unit is located in order to stay a foreclosure; or
8. In the court's discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.
Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.
D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which

constitutes an immediate threat to the health or safety of the inhabitants of the dwelling unit. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. (2011, c. 596; 2012, c. 788.)

§ 55-225.13. Noncompliance by landlord in the rental of a dwelling unit. -- Except as provided in this chapter, for the rental of a dwelling unit, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter affecting dwelling units, materially affecting health and safety, the tenant may serve a written notice on the landlord 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 such breach is not remedied in 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord 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 landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord 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.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorney fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. (2011, c. 596; 2012, c. 788.)

§ 55-225.14. Rent escrow required for continuance of tenant's case in the rental of a dwelling unit. -- A. Where a landlord has filed an unlawful detainer action seeking possession of the dwelling unit and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of

the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the dwelling unit.
C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the dwelling unit.
D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.
E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.
(2011, c. 596; 2012, c. 788.)

§ 55-225.15. Receipt required for certain rental payments; upon request. -- The landlord shall provide the tenant with written receipt, upon request of the tenant, whenever the tenant pays rent in the form of cash or a money order. (2012, c. 503.)

§ 55-225.16. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault. - A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:
1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or
2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.
B. A tenant who qualifies to terminate obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.
C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.
D. The landlord may not charge any liquidated damages.
E. The victim's obligations as a tenant under § 55-225.4 shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may

terminate the rental agreement and collect actual damages for such termination against the perpetrator. (2013, c. 531.)

§ 55-225.17. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure. -- A. If the landlord of a residential dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7, the landlord shall provide to a prospective tenant a written disclosure that so states. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement. (2013, c. 557.)

§ 55-225.18. Retaliatory conduct prohibited. - A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55-222 or 55-248.37 after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rents to that charged on similar market rentals nor decreasing services that shall apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55-222 or 55-248.37 and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;

2. The tenant is in default in rent;

3. Compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the tenant of use of the dwelling unit; or

4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others.
D. The landlord may also terminate the rental agreement pursuant to § 55-222 or 55-248.37 for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation. 2015, c. 408.

§ 55-226. Buildings destroyed or lessee deprived of possession; covenant to pay rent or repair; reduction of rent. -- No covenant or promise by a lessee to pay the rent, or that he will keep or leave the premises in good repair, shall have the effect, if the buildings thereon be destroyed by fire or otherwise, in whole or in part, without fault or negligence on his part, or if he be deprived of the possession of the premises by the public enemy, of binding him to make such payment or repair or erect such buildings again, unless there be other words showing it to be the intent of the parties that he should be so bound. But in case of such destruction there shall be a reasonable reduction of the rent for such time as may elapse until there be again upon the premises buildings of as much value to the tenant for his purposes as what may have been so destroyed; and, in case of such deprivation of possession, a like reduction until possession of the premises be restored to him. (Code 1919, § 5180.)

§ 55-226.1. Security systems for commercial rental property. -- No landlord of a premises demised for commercial or business purposes shall unreasonably withhold or delay consent for the tenant to install anticrime warning devices or security systems within the demised premises. (1981, c. 81.)

§ 55-226.2. Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems; local government fees. -- A. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a commercial or residential building, manufactured home park, or campground if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.
B. If energy submetering equipment, water and sewer submetering equipment, or energy allocation equipment is used in any building, manufactured home park, or campground, the owner, manager, or operator of the building, manufactured home park, or campground shall bill the tenant for electricity, natural gas or water and sewer for the same billing period as the utility serving the building or campground, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building, manufactured home park, or campground may charge and collect from the tenant additional service charges, including, but not limited to, monthly billing fees, account set-up fees or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building, manufactured home park, or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building or campground owner and the tenant in the rental agreement or lease. The building or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.
C. If a ratio utility billing system is used in any building, manufactured home park, or campground, in lieu of increasing the rent, the owner, manager, or operator of the building,

manufactured home park, or campground may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a building, manufactured home park, or campground, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building or campground owner from a third-party provider of the utility service. The owner, manager, or operator of the building, manufactured home park, or campground may charge and collect from the tenant additional service charges, including but not limited to monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the building, manufactured home park, or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease. The building, manufactured home park, or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent (i) as defined in § 55-248.4 if a ratio utility billing system is used in a residential multifamily dwelling unit subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) or (ii) as defined in § 55-248.41 if a ratio utility billing system is used in manufactured home park subject to the Manufactured Home Lot Rental Act (55-248.41 et seq.).

D. Energy allocation equipment shall be tested periodically by the owner, operator or manager of the building, manufactured home park, or campground. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

E. The owner of any building, manufactured home park, or campground shall maintain adequate records regarding energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within the building or campground. The owner of the building or campground may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

F. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of this title, if applicable. The use of energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

G. In lieu of increasing the rent, the owner, manager, or operator of a commercial or residential building, manufactured home park, or campground may employ a program that utilizes a mathematical formula for allocating the actual or anticipated local government fees billed to the building, manufactured home park, or campground owner among the tenants in such building, manufactured home park, or campground if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. Permitted allocation methods may include formulas based upon

square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease. Such owner, manager, or operator of a commercial or residential building, manufactured home park, or campground may also charge and collect from each tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for administration of such a program. If the building is residential and is subject to (i) the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § 55-248.4 or (ii) the Manufactured Home Lot Rental Act (55-248.41 et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § 55-248.41.

H. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a commercial or residential building, manufactured home park, or campground from including water, sewer, electrical, natural gas, or other utilities in the amount of rent as specified in the rental agreement or lease.

I. As used in this section:

"Building" means all of the individual units served through the same utility-owned meter within a commercial or residential building that is defined in subsection A of § 56-245.2 as an apartment building or house, office building or shopping center, or all of the individual dwelling units served through the same utility-owned meter within a manufactured home park as defined in § 55-248.41.

"Campground" means the same as that term is defined in § 35.1-1.

"Campsite" means the same as that term is defined in § 35.1-1.

"Energy allocation equipment" has the same meaning ascribed to such term in subsection A of § 56-245.2.

"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in subsection A of § 56-245.2.

"Local government fees" means any local government charges or fees assessed against a commercial or residential building or campground, including stormwater, recycling, trash collection, elevator testing, fire or life safety testing, or residential rental inspection programs.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a building or campground, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building or campground owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building or campground owner and the tenant in the rental agreement or lease.

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any dwelling unit or nonresidential rental unit, as defined in subsection A of § 56-245.2 or campsite, when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the building in which the dwelling unit or nonresidential rental unit is located or campground where the campsite is located.

1992, c. 766; 2003, c. 355; 2005, c. 278; 2010, c. 550; 2012, c. 338; 2014, c. 501; 2015, c. 596.

§ 55-227. Remedy for rent and for use and occupation. -- Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover, when the agreement is not by deed, a reasonable satisfaction for the use and occupation of lands. On the trial of such action, if any parol demise or any agreement not by deed whereon a certain rent was reserved

shall appear in evidence, the plaintiff shall not therefor be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts. (Code 1919, § 5519.)

§ 55-228. Who may recover rent, etc. -- He to whom rent or compensation is due, whether he have the reversion or not, his personal representative or assignee may recover it as provided in § 55-227, whatever be the estate of the person owning it, or though his estate or interest in the land be ended. And when the owner of real estate in fee, or holder of a term, yielding him rent, dies, the rent thereafter due shall be recoverable by such owner's heir or devisee, or such termholder's personal representative. And if the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, the alienee or assignee may recover such rent. (Code 1919, § 5520.)

§ 55-229. Who liable for rent. -- Rent may be recovered from the lessee or other person owing it, or his assignee, or the personal representative of either; but no assignee is to be liable for rent which became due before his interest began. Nothing herein shall impair or change the liability of heirs or devisees for rent, as for other debts of their ancestor or devisor. (Code 1919, § 5521.)

§ 55-230. When and by whom distress made. -- A distress action for rent may be brought within five years from the time the rent becomes due, and not afterwards, whether the lease is ended or not. The distress shall be made by a sheriff or high constable of the county or city wherein the premises yielding the rent, or some part thereof, may be, or the goods liable to distress may be found, under warrant from a judge of, or a magistrate serving, the judicial district. Such warrant shall be founded upon a sworn petition of the person claiming the rent, or his agent, that (i) the petitioner believes the amount of money or other thing by which the rent is measured (to be specified in the petition in accordance with § 55-231) is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed, (ii) the petitioner alleges one or more of the grounds mentioned in § 8.01-534 and sets forth in the petition specific facts in support of such allegation and (iii) the rent claimed is for rent due within five years from the time that it becomes due. The petition shall also specify the amount of the rent claimed and request either levy or seizure of the affected property prior to trial. The plaintiff shall, at the time of suing out a distress, give bond in conformity with the provisions of § 8.01-537.1. The plaintiff praying for a distress warrant shall, at the time that he files his petition, pay the proper costs, fees and taxes, and in the event of his failure to do so, the distress warrant shall not be issued.

A judge or magistrate shall make an ex parte review of the petition and may receive evidence only in the form of a sworn petition which shall be filed in the office of the clerks of court. The warrant may be issued in accordance with the prayer of the petition by a judge or magistrate only upon a determination that there appears from the petition that there is reasonable cause to believe that one of the grounds mentioned in § 8.01-534 exists, the allegations required to be in the petition are true and that bond which complies with § 8.01-537.1 has been posted.

Each copy of the distress warrant shall be issued and served on each defendant together with (i) a form for requesting a hearing of exemption from levy or seizure, as provided in § 8.01-546.1, and (ii) a copy of the bond. The distress warrant may be issued or executed on any day, including a Saturday, Sunday or other legal holiday. Service shall be made in accordance with the methods described in § 8.01-487.1. The provisions of § 8.01-546.2 shall govern claims for exemption.

The officer into whose hands the warrant is delivered shall levy or seize as directed in the warrant, except as may be provided by statute, the property found on the premises of the tenant

as provided by § 55-231. The officer shall return the warrant of distress to the court to which the warrant of distress is returnable by the return date unless otherwise notified by the court to make return by an earlier date. (Code 1919, § 5522; 1962, c. 10; 1974, c. 458; 1976, c. 177; 1980, c. 555; 1986, c. 341; 1993, c. 841; 2008, cc. 551, 691.)

§ 55-230.1. Procedure for trial on warrant in distress. -- The distress warrant shall contain a return date and be tried in the same manner as an action on a warrant as prescribed in § 16.1-79 except that the case shall be returnable not more than thirty days from its date of issuance. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions in personam. (1980, c. 555; 1993, c. 841.)

§ 55-231. On what goods levied; to what extent goods liable; priorities between landlord and other lienors. -- The distress may be levied on any goods of the lessee, or his assignee, or undertenant, found on the premises, or which may have been removed therefrom not more than thirty days. A levy within such thirty days shall have like effect as if the goods levied on had not been removed from the leased premises. If the goods of such lessee, assignee or undertenant, when carried on the premises, are subject to a lien, which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon while they are upon the leased premises, or within thirty days thereafter, they shall be liable to distress, but for not more than six months' rent if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming, or agriculture, and for not more than twelve months' rent if the lands or premises are used for farming or agriculture whether it shall have accrued before or after the creation of the lien. No other goods shall be liable to distress than such as are declared to be so liable in this section, nor shall the goods of the undertenant be liable to a greater amount than such undertenant owed the tenant at the time the distress was levied. (Code 1919, § 5523; 1922, p. 863; 1932, p. 696.)

§ 55-232. Procedure when distress levied and tenant unable to give forthcoming bond; what defense may be made. -- A. On affidavit by a tenant, whose property has been levied on under a warrant of distress, that (i) he is unable to give the bond required in § 8.01-526 and (ii) he has a valid defense under subsection B of this section, the officer levying the warrant shall permit the property to remain in the possession and at the risk of the tenant, and shall return the warrant forthwith, together with the affidavit, to the court to which such warrant is returnable. Thereupon the landlord, after 10 days' notice in writing to the tenant, may make a motion before such court for a judgment for the amount of the rent and for a sale of the property levied on, as aforesaid. The tenant may make such defense as he is authorized to make, including defenses permitted under such subsection B to an action or motion on the bond when one is given. Upon making such defense, the officer shall permit the property to remain in the possession of and at the risk of the tenant. If the property is perishable, or expensive to keep, the court, or the judge thereof in vacation, may order it to be sold, and on the final trial of the cause, the court shall dispose of the property, or proceeds of sale, according to the rights of the parties.

B. In an action or motion on a forthcoming bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal. (Code 1919, § 6519; Code 1950, § 8-453; 1970, c. 43; 1975, c. 235; 1977, c. 624; 1980, c. 555; 1986, c. 341; 2007, c. 869.)

§ 55-232.1. Repealed by Acts 1993, c. 841.

§ 55-232.2. Review of decision to issue ex parte order or process; claim of exemption. -- Promptly after levy on the property or promptly after possession of the property is taken by the officer pursuant to an ex parte order, or after denial of an application to issue such order by a magistrate, upon application of either party, and after reasonable notice, a judge of the general district court having jurisdiction shall conduct a hearing to review the decision to issue the ex parte order or process. In the event the judge finds that the order or process should not have been issued, the court may dismiss the distraint or award actual damages and reasonable attorney's fees to the person whose property was taken, or both. The provisions of § 8.01-546.2 shall govern claims for exemption. (1974, c. 458; 1980, c. 555; 1986, c. 341.)

§ 55-233. On what terms purchasers and lienors inferior to landlord may remove goods; certain liens not affected. -- If, after the commencement of any tenancy, a lien be obtained or created by deed of trust, mortgage or otherwise upon the interest or property in goods on premises leased or rented of any person liable for the rent, or such goods be sold, the party having such lien, or the purchaser of such goods, may remove them from the premises on the following terms, and not otherwise, that is to say: On paying to the person entitled to the rent so much as is in arrear, and securing to him so much as to become due, what is so paid or secured not being more altogether than six months' rent if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, and not being more altogether than twelve months' rent, if the lands or premises are used for farming or agriculture. If the goods be taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear; and as to what is to become due, he shall sell a sufficient portion of the goods on a credit till then, taking from the purchasers bonds, with good security, payable to the person so entitled, and delivering such bonds to him. If the goods be not taken under legal process, such payment and security shall be made and given before their removal. Neither this section nor § 55-231 shall affect any lien for taxes, levies, or militia fines.

For the purpose of this section and § 55-231 a monthly or weekly tenancy shall not be construed as a new lease for every month or week of occupation of the premises by the tenant, but his tenancy shall be considered as a continuance of his original lease so long as he shall continue to occupy the property without making any new written lease. (Code 1919, § 5524; 1922, p. 863; 1932, p. 696.)

§ 55-234. When goods of an undertenant may be removed from leased premises. -- Section 55-233 is subject to the following limitations: An undertenant, or a purchaser from him, or a creditor holding a deed of trust, mortgage or other encumbrance created on his goods after they were carried on the leased premises, may remove the same upon payment of so much of the rent contracted to be paid by him as is in arrear, and securing the residue, not exceeding six months' rent, if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, and for not more than twelve months' rent if the lands or premises are used for farming or agriculture; and if the goods be taken under legal process against him, the officer executing the same shall, out of the proceeds of his goods, make payment of so much of the rent as to which he is in arrear, and as to what is to become due from

him shall sell sufficient of the goods upon credit until then, taking from the purchaser bonds with good security, payable to the party entitled to receive the same, and deliver them to him. (Code 1919, § 5525; 1922, p. 863; 1932, p. 697.)

§ 55-235. When officer may enter by force to levy distress or attachment. -- The officer having such distress warrant, or an attachment for rent, if there be need for it, may, in the daytime, break open and enter into any house or close in which there may be goods liable to the distress or attachment, and may, either in the day or night, break open and enter any house or close wherein there may be any goods so liable which have been fraudulently or clandestinely removed from the demised premises. He may also levy such distress warrant or attachment on property liable for the rent found in the personal possession of the party liable therefor. (Code 1919, § 5526.)

§ 55-236. When distress not unlawful because of irregularity, etc. -- When distress shall be made for rent justly due and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, the distress itself shall not be deemed to be unlawful, nor the party making it be therefore deemed a trespasser ab initio. The party aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he shall have sustained thereby. (Code 1919, § 5527.)

§ 55-237. Return of execution; process of sale thereunder. -- The sheriff under writ of execution from the court after hearing and judgment for the landlord except when it is otherwise provided by law, shall make return on his execution as may be placed in his hands for collection and file the same, within ninety days after the same may have come to his hands, with the clerk of the court in which the case was heard. Upon the return of such execution such clerk shall preserve such execution in his office as is now provided as to other executions. If such return shall show that a levy has been made and that property levied on remains unsold, it shall be lawful for the clerk of the court in whose office such return is filed to issue a writ of venditioni exponas thereon just as if the return were upon writ of fieri facias. (Code 1919, § 5528; 1930, p. 456; 1962, c. 10; 1975, c. 235; 1980, c. 555.)

§ 55-237.1. Authority of sheriffs to store and sell personal property removed from premises; recovery of possession by owner; disposition or sale. -- Notwithstanding the provisions of § 8.01-156, when personal property is removed from any leased or rented commercial or residential premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the premises in order to restore such premises to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the leased or rented premises. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant,

the landlord and the sheriff shall not have any liability for the loss of such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive relief and such other relief as may be provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the notice a copy of this statute attached to, or made a part of, this notice. (2001, c. 222; 2006, cc. 91, 129.)

§ 55-238. Remedy when rent is to be paid in other thing than money. -- When goods are distrained or attached for rent reserved in a share of the crop, or in anything other than money, the claimant of the rent having given the tenant ten days' notice, or, if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the court to which the attachment is returnable, or the circuit court of the county or the corporation court of the corporation in which the distress is made, to ascertain the value in money of the rent reserved, and to order a sale of the goods distrained or attached. The tenant may make the same defenses that he could to a motion on a forfeited forthcoming bond given for rent and may also contest the value of what was reserved for the rent. The court shall ascertain, either by its own judgment, or, if either party require it, by the verdict of a jury impaneled without the formality of pleading, the extent of the liability of the tenant for rent, and the value in money of such rent, and if the tenant has been served with notice shall enter judgment against him for the amount so ascertained. It shall also order the goods distrained or attached, or so much thereof as may be necessary, to be sold to pay the amount so ascertained. The officer charged with the execution of such warrant or attachment shall make return thereof to the clerk's office of the court, showing how he has executed the same. If the goods so directed to be sold prove insufficient to pay the amount of the rent so ascertained, an execution may be issued on the judgment as in case of other judgments, which may be levied on such property as would be leviable under an execution issued on a judgment in an action brought to recover the rent. (Code 1919, § 5529.)

§ 55-239. Proceedings to establish right of reentry, and judgment therefor. -- Any person who shall have a right of reentry into lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, when there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any messuage, or at any other notorious place on the premises, and such service shall be in lieu of a demand and reentry; and upon proof to the court, by affidavit in case of judgment by default or upon proof on the trial, that the rent claimed was due and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration and that the plaintiff had power thereupon to reenter, he shall recover judgment and have execution for such lands. (Code 1919, § 5530.)

§ 55-240. When defendant barred of relief. -- Should the defendant, or other person for him, not pay the rent in arrear, with interest and costs, nor file a bill in equity for relief against such forfeiture, within twelve calendar months after execution executed, he shall be barred of all right, in law or equity, to be restored to such lands or tenements. (Code 1919, § 5531.)

§ 55-241. How trustee or mortgagee relieved from the forfeiture. -- Any mortgagee or trustee of such lands not in possession thereof may, within twelve calendar months after execution executed, pay the rent and all arrears, with interest and costs, or file in equity, for relief against such forfeiture; and thereupon may be relieved against it, on the same terms and conditions as the owner of such lands or tenements would be entitled to. (Code 1919, § 5532.)

§ 55-242. How owner, etc., relieved in equity. -- If the owner of such lands, or any person having right or claim thereto, shall, within the time aforesaid, file his bill for relief in any court of equity, he shall not have or continue any injunction against the proceedings at law on the ejectment, unless he shall, within thirty days next after a full and perfect answer filed by the plaintiff in ejectment, bring into court, or deposit in some bank within the Commonwealth to the credit of the cause, such money as the plaintiff in ejectment shall, in his answers, swear to be due and in arrear, over and above all just allowances and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to the plaintiff on good security, subject to the decree of the court. And in case the bill shall be filed within the time aforesaid, and after execution executed, the plaintiff shall be accountable for no more than he shall, really and bona fide, without fraud, deceit, or willful neglect, make of the premises from the time of his entering into the actual possession thereof, and if it should be less than the rent payable, then the possession shall not be restored until the plaintiff be paid the sum which the money so made shall fall short of the rent for the time he so held the lands. (Code 1919, § 5533.)

§ 55-243. How judgment of forfeiture prevented. -- A. If any party having right or claim to such lands shall, at any time before the trial in such ejectment, pay or tender to the party entitled to such rent, or to his attorney in the cause, or pay into court, all the rent and arrears, along with any reasonable attorney fees and late charges contracted for in a written rental agreement, interest and costs, all further proceedings in the ejectment shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance. If the parties dispute the amount of rent and other charges owed, the court shall take evidence on the issue and make orders for the tender, payment or refund of any appropriate amounts.

B. In cases of unlawful detainer for the nonpayment of rent of a tenant from a rental dwelling unit, the tenant may present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full

payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.
D. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (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, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof. (Code 1919, § 5534; 1992, c. 427; 1998, c. 269; 2010, c. 793; 2012, c. 788; 2013, c. 563.)

§ 55-244. When suit for reentry brought. -- In case the time for reentering be specified in the instrument creating the rent, covenant or condition, the proceedings in ejectment shall not be begun until such time shall have elapsed. (Code 1919, § 5535.)

§ 55-245. Written act of reentry to be returned and recorded, and certificate thereof published. -- When actual reentry is made, the party by or for whom the same is made shall return a written act of reentry, sworn to by the sheriff or other officer acting therein, to the clerk of the circuit court of the county or corporation court of the city wherein the lands or tenements are, who shall record the same in the deed book, and shall deliver to the party making the reentry a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded. Such certificate shall be published at least once a week for two months successively, in some newspaper published in or nearest to such county or corporation. Such publication shall be proved by affidavit to the satisfaction of the clerk, who shall record such affidavit in the deed book. Such affidavit shall reference the book and page where the original written act of reentry was recorded. The clerk shall return the original act of reentry to the party entitled thereto. The written act of reentry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence, in all cases, of the facts therein set forth.
(Code 1919, § 5536; 2014, c. 330.)

§ 55-246. Fee of clerk. -- The clerk shall be paid for recording, granting certificate, and noting publication, as aforesaid, the same fee as prescribed in subdivision A 2 of § 17.1-275, and shall collect and account for the same tax upon every such act of reentry offered for record as shall then be levied by law upon deeds of conveyance. (Code 1919, § 5537; 1994, c. 432.)

§ 55-246.1. Who may recover rent or possession. -- Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55-248.4, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city wherein the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental

agreement, in any general district court where venue is proper under § 8.01-259, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fieri facias arising out of a landlord tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03. 1983, c. 8; 1989, c. 612; 1998, c. 452; 2003, cc. 665, 667; 2004, cc. 338, 365; 2010, c. 550; 2013, c. 563; 2015, c. 190.

§ 55-247. How person entitled, etc., to lands may be restored to his possession. -- Should the person entitled to such lands at the time of reentry made, or having claim thereto, not pay or tender the rent and all arrears thereof, with interest and all reasonable expenses incurred about such reentry, within one year from the first day of publication as aforesaid, he shall be forever barred from all right in law or equity to the lands. In case any party having right shall pay or tender the rent and arrears, with interest and expenses as aforesaid, to the party making reentry, within the time aforementioned therefor, he shall be reinstated in his possession to hold as if the reentry had not been made. (Code 1919, § 5538.)

§ 55-248. Limitation of suit, etc., against person in possession by reentry. -- No person who, or who with his predecessor in title under whom he claims, shall have been possessed of lands by virtue of a reentry for the term of two years shall be disturbed therein by suit or otherwise for any defect of proceedings in such entry. (Code 1919, § 5539.)

§ 55-248.1. Repealed by Acts 2010, c. 92, cl. 1.

VIRGINIA RESIDENTIAL LANDLORD TENANT ACT

Virginia Residential Landlord and Tenant Act

§ 55-248.2. Short title. -- This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Act." (1974, c. 680; 2014, c. 813.)

§ 55-248.3. Purposes of chapter. -- The purposes of this chapter are to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; to encourage landlords and tenants to maintain and improve the quality of housing; and to establish a single body of law relating to landlord and tenant relations throughout the Commonwealth; provided, however, that nothing in this chapter shall prohibit a county, city or town from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts which may arise out of the application of this chapter, nor shall anything herein be deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes. This chapter shall supersede all other local, county, or municipal ordinances or regulations concerning landlord and tenant relations and the leasing of residential property. (1974, c. 680; 1977, c. 427.)

§ 55-248.3:1. Applicability of chapter. -- This chapter shall apply to all rental agreements entered into on or after July 1, 1974, which are not exempted pursuant to § 55-248.5, and all provisions thereof shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality, its boards and commissions or other instrumentalities, or by the courts of the Commonwealth. (2000, c. 760; 2001, c. 416.)

§ 55-248.4. Definitions. -- When used in this chapter, unless expressly stated otherwise:
"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.
"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.
"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.
"Assignment" means the transfer by any tenant of all interests created by a rental agreement.
"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Effective date of rental agreement" means the date upon which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. Landlord shall not, however, include a community land trust as defined in § 55-221.1.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or

notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any combination thereof, and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, in whom is vested:

1. All or part of the legal title to the property, or

2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 55-248.17 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

"Roomer"means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a

security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. Security deposit shall not include a damage insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or other medium.

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55-248.6, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is affixed. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter. 1974, c. 680; 1977, c. 427; 1987, c. 428; 1990, c. 55; 1991, c. 205; 1999, cc. 77, 258, 359, 390; 2000, cc. 760, 816; 2002, c. 531; 2003, cc. 355, 425, 855; 2004, c. 123; 2007, c. 634; 2008, cc. 489, 640; 2010, cc. 180, 550; 2012, c. 788; 2013, c. 563; 2014, c. 651; 2015, c. 596.

§ 55-248.5. Exemptions; exception to exemption; application of chapter to certain occupants. -- A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not governed by this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;

2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

4. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;

5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises or an ex-employee whose occupancy continues less than sixty days;
6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
7. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial or agricultural purposes;
8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development where such regulation is inconsistent with this chapter;
9. Occupancy by a tenant who pays no rent;
10. Occupancy in single-family residences where the owners are natural persons or their estates who own in their own name no more than two single-family residences subject to a rental agreement; and
11. Occupancy in a campground as defined in § 35.1-1.
B. A guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter and the innkeeper or property owner, or agent thereof, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto, which would otherwise be required under this chapter. For purposes of this chapter, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.
C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.
D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as their primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.
E. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the applicability of the provisions of this chapter in the rental agreement. 1974, c. 680; 1975, c. 314; 1977, c. 427; 1983, c. 244; 1985, c. 314; 1988, cc. 184, 602; 1991, c. 552; 2000, c. 760; 2013, cc. 279, 712; 2014, c. 651; 2015, c. 394.

§ 55-248.6. Notice. -- A. As used in this chapter:
"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the

time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

B. If the rental agreement so provides, the landlord and tenant may send notices in electronic form, however any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made, or at any place held out by the landlord as the place for receipt of the communication.

C. In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

D. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

E. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) of Title 36 shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address and telephone number of the legal services program, if any, serving the jurisdiction wherein the premises are located. (1974, c. 680; 1982, c. 260; 1993, c. 754; 1998, c. 260; 2000, c. 760; 2008, cc. 489, 640.)

§ 55-248.6:1. Application deposit and application fee. -- Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees. (1977, c. 427; 1985, c. 208; 1993, c. 382; 2000, c. 760; 2003, c. 416; 2008, c. 489; 2011, c. 766; 2013, c. 563.)

§ 55-248.7. Terms and conditions of rental agreement; copy for tenant; accounting of rental payments. -- A. A landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for an accounting of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month. Terminations of tenancies shall be governed by § 55-248.37 unless the rental agreement provides for a different notice period.

E. If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of his approval.

F. A copy of any written rental agreement signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

H. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order. (1974, c. 680; 1977, c. 427; 1983, c. 39; 1988, c. 68; 2000, c. 760; 2003, c. 424; 2012, cc. 464, 503; 2013, c. 563.)

§ 55-248.7:1. Prepaid rent; maintenance of escrow account. -- A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant. 2002, c. 531; 2015, c. 596.

§ 55-248.7:2. Landlord may obtain certain insurance for tenant. -- A. Damage Insurance. A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in § 55-248.4, such payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55-248.9, the landlord cannot require a tenant to pay both security deposits and the cost of damage insurance premiums, if the total amount of any security deposits and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the

landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. Renter's Insurance. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in residential units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, to provide such coverage for the tenant as part of rent or as otherwise provided herein. As provided in § 55-248.4, such payments shall not be deemed a security deposit, but shall be rent. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

C. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with the administration of a renter's insurance program, including a tenant opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

D. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan. 2004, c. 123; 2005, c. 285; 2010, c. 550; 2012, c. 788; 2015, c. 596.

§ 55-248.8. Effect of unsigned or undelivered rental agreement. -- If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of

rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement, given effect by the operation of this section, provides for a term longer than one year, it is effective for only one year. (1974, c. 680.)

§ 55-248.9. Prohibited provisions in rental agreements. -- A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forego rights or remedies under this chapter;
2. Agrees to waive or forego rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) or Chapter 13 (§ 55-217 et seq.) of this title;
3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
4. Agrees to pay the landlord's attorney's fees except as provided in this chapter;
5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith;
6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or
7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. A provision prohibited by subsection A included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him and reasonable attorney's fees. (1974, c. 680; 1977, c. 427; 1987, c. 473; 1991, c. 720; 2000, c. 760; 2002, c. 531; 2003, c. 905.)

§ 55-248.9:1. Confidentiality of tenant records. -- A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless:

1. The tenant or prospective tenant has given prior written consent;
2. The information is a matter of public record as defined in § 2.2-3701;
3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;
4. The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § 55-248.31 and the tenant did not remain in the premises thereafter;
5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;
6. The information is requested pursuant to a subpoena in a civil case;
7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;
8. The information is requested by a contract purchaser of the landlord's property; provided the contract purchaser agrees in writing to maintain the confidentiality of such information;
9. The information is requested by a lender of the landlord for financing or refinancing of the property;
10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney;
12. The information is otherwise provided in the case of an emergency; or
13. The information is requested by the landlord to be provided to the managing agent, or a successor to the managing agent.
B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.
C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing herein shall be construed to require a landlord or managing agent to indemnify such third-party service provider. 1985, c. 567; 2000, c. 760; 2003, c. 426; 2006, cc. 491, 667; 2008, c. 489; 2010, c. 550; 2015, c. 596.

§ 55-248.10. Repealed by Acts 2000, c. 760, cl. 2.

§ 55-248.10:1. Landlord and tenant remedies for abuse of access. -- If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees. (2000, c. 760.)

§ 55-248.11. Repealed by Acts 2000, c. 760, cl. 2.

§ 55-248.11:1. Inspection of premises. -- The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct. (1977, c. 427; 1992, c. 451; 2000, c. 760.)

§ 55-248.11:2. Disclosure of mold in dwelling units. -- As part of the written report of the move-in inspection required by § 55-248.11:1, the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection. (2004, c. 226; 2008, c. 640.)

§ 55-248.12. Disclosure. -- A. The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

1. The person or persons authorized to manage the premises; and

2. An owner of the premises or any other person authorized to act for and on behalf of the owner, for the purposes of service of process and receiving and receipting for notices and demands.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. If an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel or motel use or planned unit development, then the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and receipting for notices and demands. (1974, c. 680; 1983, c. 257; 2000, c. 760.)

§ 55-248.12:1. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure. -- A. Notwithstanding the provisions of subdivision A 10 of § 55-248.5, the landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed

as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement. (2005, c. 511.)

§ 55-248.12:2. Required disclosures for properties with defective drywall; remedy for nondisclosure. -- A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of notice of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement. (2011, cc. 34, 46.)

§ 55-248.12:3. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure. -- A. If the landlord of a residential dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7, the landlord shall provide to a prospective tenant a written disclosure that so states. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights

or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement. (2013, c. 557.)

§ 55-248.13. Landlord to maintain fit premises. -- A. The landlord shall:
1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;
4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55-248.16. Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall make available to the tenant copies of any available written information related to the remediation of mold;
6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same;
7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and
8. Maintain any carbon monoxide alarm that has been installed by the landlord in a dwelling unit.
B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.
C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1 of subsection A.
D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6, and 7 of subsection A and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
1974, c. 680; 1987, cc. 361, 636; 2000, c. 760; 2004, c. 226; 2007, c. 634; 2008, cc. 489, 640; 2009, c. 663; 2014, c. 632; 2015, c. 274.

§ 55-248.13:1. Landlord to provide locks and peepholes. -- The governing body of any county, city or town may require by ordinance that any landlord who rents five or more dwelling units in any one building shall install:

1. Dead-bolt locks which meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new multi-family construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole.
2. Manufacturer's locks which meet the requirements of the Uniform Statewide Building Code and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level or levels designated in the ordinance.
3. Locking devices which meet the requirements of the Uniform Statewide Building Code on all exterior windows.
Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance. (1977, c. 464; 1988, c. 500.)

§ 55-248.13:2. Access of tenant to cable, satellite and other television facilities. -- No landlord shall demand or accept payment of any fee, charge or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider, designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided, and for the reasonable value of the landlord's property used by the television service provider.
No landlord shall demand or accept any such payment from any tenants in exchange therefor unless the landlord is itself the provider of the service. Nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained herein shall prohibit a landlord from requiring that the provider of such service and the tenant bear the entire cost of the installation, operation or removal of the facilities incident thereto, or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation or removal. (1982, c. 323; 2000, c. 760; 2003, cc. 60, 64, 68.)

§ 55-248.13:3. Notice to tenants for insecticide or pesticide use. -- A. The landlord shall give written notice to the tenant no less than forty-eight hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the forty-eight-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than twenty-four hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.
B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed

in or upon such premises where the insecticide or pesticide will be applied at least forty-eight hours prior to the application. (2000, c. 760; 2009, c. 663.)

§ 55-248.14. Limitation of liability. -- Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management. (1974, c. 680; 1987, c. 313; 2000, c. 760.)

§ 55-248.15. Tenancy at will; effect of notice of change of terms or provisions of tenancy. -- A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law. (1974, c. 680; 2000, c. 760.)

§ 55-248.15:1. Security deposits. -- A. A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as hereinafter provided may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § 55-248.16, less reasonable wear and tear; or (iii) to other damages or charges as provided in the rental agreement. The security deposit and any deductions, damages and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due the tenant within 45 days after termination of the tenancy and delivery of possession.

Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. Regardless of the number of tenants subject to a rental agreement, if a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord shall, within a reasonable period of time not to exceed 90 days, escheat the balance of such security deposit and any other moneys due the tenant to the Commonwealth, which sums shall be sent to the Virginia Department of Housing and Community Development, payable to the State Treasurer, and credited to the Virginia Housing Trust Fund established pursuant to § 36-142. Upon payment to the Commonwealth, the landlord shall have no further liability to any tenant relative to the security deposit. If the landlord or managing agent is a real estate licensee, compliance with this paragraph shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided the landlord has given prior written notice in accordance with this section, the landlord may withhold a

reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days thereafter, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter, (ii) a vacating notice to the tenant in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § 55-248.6.

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period, or if the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

The landlord shall notify the tenant in writing of any deductions provided by this subsection to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection B. Such notification shall not be required for deductions made less than 30 days prior to the termination of the rental agreement.

If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this paragraph, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

B. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section which the landlord has made by reason of a tenant's noncompliance with § 55-248.16 during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

C. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall make reasonable efforts to advise the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall so advise the landlord in writing who, in turn, shall notify the tenant of the time and date of the inspection, which must be made within 72 hours of delivery of possession. Upon completion of the inspection attended by the tenant, the landlord shall furnish the tenant with an itemized list of damages to the dwelling unit known to exist at the time of the inspection.

D. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section. 2000, cc. 760, 761; 2001, c. 524; 2003, c. 438; 2007, c. 634; 2010, c. 550; 2013, c. 563; 2014, c. 651; 2015, c. 596.

§ 55-248.15:2. (Repealed effective January 1, 2015) Schedule of interest rates on security deposits. -- A. The purpose of this section is to set out the interest rates applicable under this chapter.

B. The rates are as follows:

1. July 1, 1975, through December 31, 1979, 3.0%.
2. January 1, 1980, through December 31, 1981, 4.0%.
3. January 1, 1982, through December 31, 1984, 4.5%.
4. January 1, 1985, through December 31, 1994, 5.0%.
5. January 1, 1995, through December 31, 1995, 4.75%.
6. January 1, 1996, through December 31, 1996, 5.25%.
7. January 1, 1997, through December 31, 1998, 5.0%.
8. January 1, 1999, through June 30, 1999, 4.5%.
9. July 1, 1999, through December 31, 1999, 3.5%.
10. January 1, 2000, through December 31, 2000, 4.0%.
11. January 1, 2001, through December 31, 2001, 5.0%.
12. January 1, 2002, through December 31, 2002, 0.25%.
13. January 1, 2003, through December 31, 2003, 0%.
14. January 1, 2004, through December 31, 2004, 1.0%.
15. January 1, 2005, through December 31, 2005, 2.25%.
16. January 1, 2006, through December 31, 2006, 4.25%.
17. January 1, 2007, through December 31, 2007, 5.25%.
18. January 1, 2008, through December 31, 2008, 0.75%.
19. January 1, 2009, through December 31, 2009, 0.00%.
20. January 1, 2010, through December 31, 2010, 0.00%.
21. January 1, 2011, through December 31, 2011, 0.00%.
22. January 1, 2012, through December 31, 2012, 0.00%.
23. January 1, 2013, through December 31, 2013, 0.00%.
24. January 1, 2014, through December 31, 2014, 0.00%.

(2003, c. 438; 2006, c. 667; 2007, c. 634; 2008, c. 489; 2009, c. 663; 2010, c. 550; 2011, c. 766; 2013, c. 563; 2014, c. 651.)

§ 55-248.16. Tenant to maintain dwelling unit. -- A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1. (1974, c. 680; 1987, c. 428; 1999, c. 80; 2000, c. 760; 2003, c. 355; 2004, c. 226; 2008, cc. 489, 617, 640; 2009, c. 663; 2011, c. 766; 2014, c. 632.)

§ 55-248.17. Rules and regulations. -- A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenants' use and occupancy of the premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;
2. It is reasonably related to the purpose for which it is adopted;
3. It applies to all tenants in the premises in a fair manner;
4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;
5. It is not for the purpose of evading the obligations of the landlord; and
6. The tenant has been provided with a copy of the rules and regulations or changes thereto at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not work a substantial modification of his bargain. If a rule or regulation is adopted or changed after the tenant enters into the rental agreement that does work a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief. (1974, c. 680; 2000, c. 760.)

§ 55-248.18. Access; consent; correction of nonemergency conditions; relocation of tenant.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55-248.13; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an

"emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.
The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section.
C. The landlord has no other right to access except by court order or that permitted by §§ 55-248.32 and 55-248.33 or if the tenant has abandoned or surrendered the premises.
D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices, that the tenant may believe necessary to ensure his safety, provided:
1. Installation does no permanent damage to any part of the dwelling unit.
2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.
3. Upon termination of the tenancy the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.
E. Upon written request of the tenant, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code. 1974, c. 680; 1993, c. 634; 1995, c. 601; 1999, c. 65; 2000, c. 760; 2001, c. 524; 2004, c. 307; 2008, cc. 489, 617; 2009, c. 663; 2011, c. 766; 2014, c. 632; 2015, c. 596.

§ 55-248.18:1. Access following entry of certain court orders. -- A. A tenant who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant to do so, provided:
1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and
2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.
Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.
B. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.
C. This section shall not apply when the court order excluding a person was issued ex parte. (2005, cc. 735, 825.)

§ 55-248.18:2. Relocation of tenant where mold remediation needs to be performed in the dwelling unit. -- Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.4 for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § 55-248.4. The landlord shall pay all costs of the mold remediation, unless the mold is a result of the tenant's failure to comply with § 55-248.16. (2008, c. 640; 2009, c. 663; 2011, c. 779.)

§ 55-248.19. Use and occupancy by tenant. -- Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence. (1974, c. 680; 2000, c. 760.)

§ 55-248.20. Tenant to surrender possession of dwelling unit. -- At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable attorney's fees. (1974, c. 680; 2000, c. 760.)

§ 55-248.21. Noncompliance by landlord. -- Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord 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 such breach is not remedied in 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord 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 landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord 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.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorneys' fees unless the landlord proves by a

preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55-248.15:1. (1974, c. 680; 1982, c. 260; 1987, c. 387; 2000, c. 760; 2003, c. 363.)

§ 55-248.21:1. Early termination of rental agreement by military personnel. -- A. Any member of the armed forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit; (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit; (iii) is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard; or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by § 55-248.16.

D. The exemption provided in subdivision 10 of subsection A of § 55-248.5 shall not apply to this section. (1977, c. 427; 1978, c. 104; 1982, c. 260; 1983, c. 241; 1986, c. 29; 1988, c. 184; 2000, c. 760; 2002, c. 760; 2005, c. 742; 2006, c. 667; 2007, c. 252.)

§ 55-248.21:2. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault. A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or

2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is

given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.
C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.
D. The landlord may not charge any liquidated damages.
E. The victim's obligations as a tenant under § 55-248.16 shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to § 55-248.35. (2013, c. 531.)

§ 55-248.22. Failure to deliver possession. -- If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination, the landlord shall return all prepaid rent and security deposits; or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney's fees. (1974, c. 680; 2000, c. 760.)

§ 55-248.23. Wrongful failure to supply heat, water, hot water or essential services. -- A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas or other essential service, the tenant must serve a written notice on the landlord specifying the breach, if acting under this section and, in such event, and after a reasonable time allowed the landlord to correct such breach, may:
1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or
2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.
B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § 55-248.21 as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent. (1974, c. 680; 1982, c. 260; 2000, c. 760.)

§ 55-248.24. Fire or casualty damage. -- If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § 55-226 shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.
If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55-248.15:1 and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty. 1974, c. 680; 1982, c. 260; 2000, c. 760; 2005, c. 807; 2011, c. 766; 2015, c. 596.

§ 55-248.25. Landlord's noncompliance as defense to action for possession for nonpayment of rent. -- A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:
1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and
2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.
B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.
C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall pass such order as may be required including any one or more of the following:
1. An order to set-off to the tenant as determined by the court in such amount as may be equitable to represent the existence of any condition set forth in subsection A which is found by the court to exist;
2. Terminate the rental agreement or order surrender of the premises to the landlord; or
3. Refer any matter before the court to the proper state or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents which will become due during the period of continuance, to be held by the court pending its

further order or in its discretion the court may use such funds to pay a mortgage on the property in order to stay a foreclosure, to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or to remedy any condition set forth in subsection A which is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney's fees. (1974, c. 680; 1982, c. 260; 2000, c. 760.)

§ 55-248.25:1. Rent escrow required for continuance of tenant's case. -- A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal. (1999, cc. 382, 506; 2009, c. 137.)

§ 55-248.26. Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of service. -- If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of gas, water, or other essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted utility service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and a reasonable attorney fee. If the rental agreement is terminated the landlord shall

return all of the security deposit in accordance with § 55-248.15:1. (1974, c. 680; 2000, c. 760; 2013, c. 110.)

§ 55-248.27. Tenant's assertion; rent escrow. -- A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection C.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable;

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; and

3. It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

C. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement or ordering the premises surrendered to the landlord;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either

case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;
6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;
7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;
8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.
Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.
D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.
(1974, c. 680; 2000, c. 760; 2001, c. 524.)

§§ 55-248.28. through 55-248.30. Repealed by Acts 2000, c. 760, cl. 2.

§ 55-248.31. Noncompliance with rental agreement; monetary penalty. -- A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 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 which 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 contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which 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.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, 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 action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity 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 which 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 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 herein 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 § 55-248.31:01 based upon 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, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely 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 promptly to notify the landlord within 24 hours thereafter 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 more than 7 days thereafter. 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 § 55-248.16, 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 which 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 § 55-248.35. 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 § 55-248.35. 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 the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. 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 or not a lawsuit is filed or an order 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.

H. 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. (1974, c. 680; 1978, c. 378; 1980, c. 502; 1982, c. 260; 1984, c. 78; 1987, c. 387; 1988, c. 62; 1989, c. 301; 1995, c. 580; 2000, c. 760; 2003, c. 363; 2004, c. 232; 2005, cc. 808, 883; 2006, cc. 628, 717; 2007, c. 273; 2008, c. 489; 2013, c. 563; 2014, c. 813.)

§ 55-248.31:01. Barring guest or invitee of tenants. -- A. A guest or invitee of a tenant may be barred from the premises by the landlord upon written notice served personally upon the guest or invitee of the tenant for conduct on the landlord's property where the premises are located which violates the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice must be served upon the tenant in accordance with this chapter. The

notice shall describe the conduct of the guest or invitee which is the basis for the landlord's action.
B. In addition to the remedies against the tenant authorized by this chapter, a landlord may apply to the magistrate for a warrant for trespass, provided the guest or invitee has been served in accordance with subsection A.
C. The tenant may file a tenant's assertion, in accordance with § 55-248.27, requesting that the general district court review the landlord's action to bar the guest or invitee. (1999, cc. 359, 390; 2000, c. 760.)

§ 55-248.31:1. Sheriffs authorized to serve certain notices; fees therefor. -- The sheriff of any county or city, upon request, may deliver any notice to a tenant on behalf of a landlord or lessor under the provisions of § 55-225 or § 55-248.31. For this service, the sheriff shall be allowed a fee not to exceed twelve dollars. (1981, c. 148; 1995, c. 51.)

§ 55-248.32. Remedy by repair, etc.; emergencies. -- If there is a violation by the tenant of § 55-248.16 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.
In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.
The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so. (1974, c. 680; 2000, c. 760; 2009, c. 663.)

§ 55-248.33. Remedies for absence, nonuse and abandonment. -- If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises have been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § 55-248.6 requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be rebuttable presumption that the premises have been abandoned by the tenant and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § 55-248.35. (1974, c. 680; 2002, c. 761.)

§ 55-248.34. Repealed by Acts 2003, c. 427, cl. 2

§ 55-248.34:1. Landlord's acceptance of rent with reservation. -- A. Provided the landlord has given written notice to the tenant that the rent will be accepted with reservation, the landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Chapter 13 (§ 8.01-374 et seq.) of Title 8.01 and proceed with eviction under § 55-248.38:2. Such notice shall be included in a written termination notice given by the landlord to the tenant in accordance with § 55-248.31 or in a separate written notice given by the landlord to the tenant within five business days of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance with § 55-248.31, the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant.

B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to § 55-248.38:2, the landlord may accept all amounts owed to the landlord by the tenant, including full payment of any money judgment, award of attorney fees and court costs, and all subsequent rents that may be paid prior to eviction, and proceed with eviction provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees and court costs, and all subsequent rents that may be paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to § 8.01-471.

C. However, the tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.

D. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (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, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof.
(2003, c. 427; 2006, c. 667; 2008, c. 489; 2010, c. 793; 2012, c. 788; 2013, c. 563; 2014, c. 813.)

§ 55-248.35. Remedy after termination. -- If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees as provided in § 55-248.31, and the cost of service of any notice under § 55-225 or § 55-248.31 or process by a sheriff or private process server which cost shall not exceed the amount authorized by § 55-248.31:1, which claims may be enforced, without limitation, by the institution of an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for such rent as would have accrued until the expiration of the term thereof or until a tenancy pursuant to a new rental agreement commences, whichever first occurs; provided that nothing herein contained shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined herein, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.
In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § 55-248.15:1. (1974, c. 680; 1981, c. 539; 1988, c. 68; 1989, c. 383; 1996, c. 326; 2000, c. 760; 2001, c. 524.)

§ 55-248.36. Recovery of possession limited. -- A landlord may not recover or take possession of the dwelling unit (i) by willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service required by the rental agreement or (ii) by refusal to permit the tenant access to the unit unless such refusal is pursuant to a court order for possession. (1974, c. 680; 1978, c. 520.)

§ 55-248.37. Periodic tenancy; holdover remedies. -- A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § 55-248.35 shall control.
B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling

unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § 55-248.7 applies.

C. In the event of termination of a rental agreement and the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice. (1974, c. 680; 1977, c. 427; 1982, c. 260; 2004, c. 123; 2005, c. 805; 2009, c. 663; 2013, c. 563.)

§ 55-248.38. Repealed by Acts 2000, c. 760, cl. 2.

§ 55-248.38:1. Disposal of property abandoned by tenants. -- If any items of personal property are left in the dwelling unit, the premises, or in any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination, (ii) given written notice to the tenant in accordance with §55-248.33, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant shall have the right to remove his personal property from the dwelling unit or the premises at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been

completed pursuant to § 8.01-470. (1984, c. 741; 1995, c. 228; 1998, c. 461; 2000, c. 760; 2002, c. 762; 2013, c. 563.)

§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale. -- Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or from any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice. (2001, c. 222; 2006, c. 129; 2013, c. 563.)

§ 55-248.38:3. Disposal of property of deceased tenants. -- A. If a tenant, who is the sole occupant of the dwelling unit, dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § 55-248.6 if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items

of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55-248.38:1, if not claimed within 10 days.
B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.
C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant, who is the sole occupant of the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § 55-248.35, and the landlord shall mitigate damages as provided thereunder. (2006, c. 820; 2010, c. 550; 2011, c. 766; 2014, c. 813.)

§ 55-248.39. Retaliatory conduct prohibited. -- A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55-222 or 55-248.37 after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rents to that charged on similar market rentals nor decreasing services that shall apply equally to all tenants.
B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.
C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55-222 or 55-248.37 and bring an action for possession if:
1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
2. The tenant is in default in rent;
3. Compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the tenant of use of the dwelling unit; or
4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. The maintenance of the action provided herein does not release the landlord from liability under § 55-248.15:1.
D. The landlord may also terminate the rental agreement pursuant to § 55-222 or 55-248.37 for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation. 1974, c. 680; 1983, c. 396; 1985, c. 268; 2000, c. 760; 2015, c. 408.

§ 55-248.40. Actions to enforce chapter. -- In addition to any other remedies in this chapter, any person adversely affected by an act or omission prohibited under this chapter may institute

an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred. If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice, and in its discretion award the plaintiff damages as herein provided. (1974, c. 680; 2013, c. 110.)

LEGISLATION FROM 2016 VIRGINIA GENERAL ASSEMBLY

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-128 and 8.01-375 of the Code of Virginia, relating to civil judgment procedure; damages; witnesses.

[H 446]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-128 and 8.01-375 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-128. Verdict and judgment; damages.

A. If it appears that the plaintiff was forcibly or unlawfully turned out of possession, or that it was unlawfully detained from him, the verdict or judgment shall be for the plaintiff for the premises, or such part thereof as may be found to have been so held or detained. The verdict or judgment shall also be for such damages as the plaintiff may prove to have been sustained by him by reason of such forcible or unlawful entry, or unlawful detention, of such premises, and such rent as he may prove to have been owing to him.

B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the property unlawfully entered or unlawfully detained and be issued a writ of possession, and continue the case for up to ~~90~~ *120* days to establish final rent and damages. If the plaintiff elects to proceed under this section, the judge shall hear evidence as to the issue of possession on the initial court date and shall hear evidence on the final rent and damages at the hearing set on the continuance date, unless the plaintiff requests otherwise or the judge rules otherwise. Nothing in this section shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

If under this section an appeal is taken as to possession, the entire case shall be considered appealed. The plaintiff shall, in the instance of a continuance taken under this section, mail to the defendant at the defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the continuance date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking judgment for additional sums. A copy of such notice shall be filed with the court.

C. No verdict or judgment rendered under this section shall bar any separate concurrent or future action for any such damages or rent as may not be so claimed.

§ 8.01-375. Exclusion of witnesses in civil cases (Subsection (a) of Supreme Court Rule 2:615 derived in part from this section and subsection (b) of Supreme Court Rule 2:615 derived from this section).

The court trying any civil case may upon its own motion, and shall upon the motion of any party, require the exclusion of every witness. However, *the following shall be exempt from the rule of this section as a matter of right: (i)* each named party who is an individual, *(ii)* one officer or agent of each party ~~which~~ *that* is a corporation or association ~~and~~, *(iii)* an attorney alleged in a habeas corpus proceeding to have acted ineffectively ~~shall be exempt from the rule of this section as a matter of right~~, *and (iv) in an unlawful detainer action filed in general district court, a managing agent as defined in § 55-248.4.*

Where expert witnesses are to testify in the case, the court may, at the request of all parties, allow one expert witness for each party to remain in the courtroom; however, in cases pertaining to the distribution of marital property pursuant to § 20-107.3 or the determination of child or spousal support pursuant to § 20-108.1, the court may, upon motion of any party, allow one expert witness for each party to remain in the courtroom throughout the hearing.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 55-225.5 and 55-248.18:1 of the Code of Virginia, relating to protective orders in cases of family abuse; possession of premises.

[H 711]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.5 and 55-248.18:1 of the Code of Virginia are amended and reenacted as follows:

§ 55-225.5. Access following entry of certain court orders.

A. A tenant *or authorized occupant* who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant *or authorized occupant* to do so, provided:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. *A person, who is not a tenant or authorized occupant in the dwelling unit and who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants, may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.*

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement, and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

~~C.~~ *D.* This section shall not apply when the court order excluding a person was issued ex parte.

§ 55-248.18:1. Access following entry of certain court orders.

A. A tenant *or authorized occupant* who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant *or authorized occupant* to do so, provided:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. *A person, who is not a tenant or authorized occupant in the dwelling unit and who has obtained*

an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants, may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement, and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

~~C.~~ *D.* This section shall not apply when the court order excluding a person was issued ex parte.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 55-225.9, 55-237.1, 55-248.4, 55-248.5, 55-248.9, 55-248.9:1, 55-248.11:1, 55-248.16, 55-248.18, 55-248.18:2, and 55-248.24 of the Code of Virginia, relating to landlord and tenant laws.

[H 735]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.9, 55-237.1, 55-248.4, 55-248.5, 55-248.9, 55-248.9:1, 55-248.11:1, 55-248.16, 55-248.18, 55-248.18:2, and 55-248.24 of the Code of Virginia are amended and reenacted as follows:

§ 55-225.9. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-225.8 for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § 55-225.8. The landlord shall pay all costs of the *relocation and the* mold remediation, unless the tenant is at fault for the mold condition.

§ 55-237.1. Authority of sheriffs to store and sell personal property removed from premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from any leased or rented commercial or residential premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the premises in order to restore such premises to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the leased or rented premises. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the loss of such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive relief and such other relief as may be provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the notice a copy of this statute attached to, or made a part of, this notice.

Nothing herein shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant of any leased or rented commercial or residential premises to distress, levy, and seize such personal property as otherwise provided by law.

§ 55-248.4. Definitions.

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Effective date of rental agreement" means the date upon which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. Landlord shall not, however, include a community land trust as defined in § 55-221.1.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in

question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any combination thereof, and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, in whom is vested:

1. All or part of the legal title to the property, or

2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 55-248.17 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. Security deposit shall not include a damage insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit, *condominium unit,* or any *other* dwelling unit ~~which~~ *that* has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or other medium.

A tenant may request copies of their tenant records pursuant to § 55-248.9:1.

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55-248.6, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is affixed. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.

§ 55-248.5. Exemptions; exception to exemption; application of chapter to certain occupants.

A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not governed by this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;

2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

4. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;

5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises or an ex-employee whose occupancy continues less than sixty days;

6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

7. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial or agricultural purposes;

8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development where such regulation is inconsistent with this chapter;

9. Occupancy by a tenant who pays no rent;

10. Occupancy in single-family residences *located in Virginia* where the owners are natural persons or their estates who own in their own name no more than two single-family residences subject to a rental agreement; and

11. Occupancy in a campground as defined in § 35.1-1.

B. A guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter and the innkeeper or property owner, or agent thereof, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto, which would otherwise be required under this chapter. For purposes of this chapter, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as their primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

E. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the applicability of the provisions of this chapter in the rental agreement.

§ 55-248.9. Prohibited provisions in rental agreements.

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

1. Agrees to waive or forego rights or remedies under this chapter;

2. Agrees to waive or ~~forego~~ *forgo* rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) or Chapter 13 (§ 55-217 et seq.) ~~of this title~~, *except where the tenant is on a month-to-month lease pursuant to § 55-222*;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney's fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or

7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. A provision prohibited by subsection A included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

§ 55-248.9:1. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless:

1. The tenant or prospective tenant has given prior written consent;

2. The information is a matter of public record as defined in § 2.2-3701;

3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

4. The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § 55-248.31 and the tenant did not remain in the premises thereafter;

5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;

6. The information is requested pursuant to a subpoena in a civil case;

7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;

8. The information is requested by a contract purchaser of the landlord's property; provided the contract purchaser agrees in writing to maintain the confidentiality of such information;

9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney *or the landlord's collection agency*;

12. The information is otherwise provided in the case of an emergency; or

13. The information is requested by the landlord to be provided to the managing agent, or a successor to the managing agent.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing herein shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant

records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

§ 55-248.11:1. Inspection of premises.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct. *If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § 55-248.11:2 or 55-248.13.*

§ 55-248.16. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative *and shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Uniform Statewide Building Code (§ 36-97 et seq.)*;

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ 55-248.18. Access; consent; correction of nonemergency conditions; relocation of tenant.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit

in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. *If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § 55-248.16 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning in accordance with § 55-248.32, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, or other applicable law, the landlord may send a written notice of termination pursuant to § 55-248.31. If the rental agreement so provides and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.*

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55-248.13; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section.

C. The landlord has no other right to access except by court order or that permitted by §§ 55-248.32 and 55-248.33 or if the tenant has abandoned or surrendered the premises.

D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices, that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.

2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.

3. Upon termination of the tenancy the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of the tenant, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code.

§ 55-248.18:2. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.4 for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of

the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § 55-248.4. The landlord shall pay all costs of the *relocation and the* mold remediation, unless the mold is a result of the tenant's failure to comply with § 55-248.16.

§ 55-248.24. Fire or casualty damage.

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § 55-226 shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55-248.15:1 and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, *and may recover actual damages sustained pursuant to § 55-248.35*. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 36-105.1:1 of the Code of Virginia, relating to rental inspection programs; exemptions.

[H 1011]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 36-105.1:1 of the Code of Virginia is amended and reenacted as follows:

§ 36-105.1:1. Rental inspections; rental inspection districts; exemptions; penalties.

A. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

B. Localities may inspect residential rental dwelling units. The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided in subdivision B 3, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section, and

2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection, or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the Building Code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

C. 1. Notification to owners of dwelling units. Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

2. Notification by owners of dwelling units to locality. The rental inspection ordinance may include a

provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to $50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

D. Initial inspection of dwelling units when rental inspection district is established. Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for in subsection C, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such property.

E. Provisions for initial and periodic inspections of multifamily dwelling units. If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10 percent of the dwelling units, of a multifamily development, which includes all of the multifamily buildings which are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce the Building Code, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in subsection H.

F. 1. Follow-up inspections. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the Building Code to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants.

2. Periodic inspections. Except as provided in subdivision F 1, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

G. Exemptions from rental inspection ordinance.

1. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the Building Code, provided that there are no violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided in subdivision F 2, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of the Building Code during the exemption period, the building department may revoke the exemption previously granted under this section.

2. The local governing body may exempt a residential rental unit otherwise subject to a rental inspection ordinance provided such unit is managed by (i) any person licensed under the provisions of § 54.1-2106.1; (ii) any (a) property manager or (b) managing agent of a landlord as defined in § 55-248.4; (iii) any owner of a publicly traded entity that manages its own multifamily residential rental units; or (iv) any owner or managing agent who, in the determination of the local governing body, has achieved a satisfactory designation as a professional property manager.

H. A local governing body may establish a fee schedule for enforcement of the Building Code, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

I. The provisions of this section shall not, in any way, alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55.

J. The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 to enforce the Building Code.

K. Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the Building Code.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 55-225.12 and 55-248.27 of the Code of Virginia, relating to landlord and tenant law; tenant remedies.

[H 1209]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.12 and 55-248.27 of the Code of Virginia are amended and reenacted as follows:

§ 55-225.12. Tenant's assertion; rent escrow; dwelling units.

A. The tenant may assert that there exists upon the dwelling unit, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or a lack of light, electricity or adequate sewage disposal facilities; or an infestation of rodents; or the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the dwelling unit is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection ~~C~~ *D*.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; *and*

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; ~~and~~.

~~3.~~ *C.* It shall be sufficient answer or rejoinder to ~~such~~ a declaration *pursuant to subsection A* if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the dwelling unit for the purpose of correcting such conditions.

~~C.~~ *D.* Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement *upon the request of the tenant* or ordering the dwelling unit surrendered to the landlord *if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court*;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rent payments within

five days of the date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In the court's discretion, ordering escrow funds disbursed to pay a mortgage on the property upon which the dwelling unit is located in order to stay a foreclosure; or

8. In the court's discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

~~D.~~ *E.* The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the dwelling unit. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed.

§ 55-248.27. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection ~~C~~ *D*.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; *and*

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter~~; and~~.

~~3.~~ *C.* It shall be sufficient answer or rejoinder to ~~such~~ a declaration *pursuant to subsection A* if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

~~C.~~ *D.* Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement *upon the request of the tenant* or ordering the premises surrendered to the landlord *if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court*;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the

tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; *or*

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

~~D.~~ *E.* The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 8.01-15.2 of the Code of Virginia, relating to the Servicemembers Civil Relief Act; appointment of counsel.

[S 27]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-15.2 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-15.2. Servicemembers Civil Relief Act; default judgment; appointment of counsel.

A. Notwithstanding the provisions of § 8.01-428, in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. Subject to the provisions of § 8.01-3, the Supreme Court shall prescribe the form of such affidavit, or the requirement for an affidavit may be satisfied by a written statement, declaration, verification or certificate, subscribed and certified or declared to be true under penalty of perjury. Any judgment by default entered by any court in any civil action or proceeding in violation of ~~Article 2~~ *subchapter II* of the Servicemembers Civil Relief Act (50 U.S.C. ~~app.~~ § ~~527~~ *3901* et seq.) may be set aside as provided by the Act. Failure to file an affidavit shall not constitute grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of default judgment, a servicemember ~~for the purposes of~~ *as defined in* 50 U.S.C. app. § ~~502~~ *3911*.

B. Where appointment of counsel is required pursuant to 50 U.S.C. ~~app.~~ § ~~521~~ *3931* or ~~522~~ *3932 or another section of the Servicemembers Civil Relief Act*, the court may assess ~~attorneys'~~ *reasonable attorney* fees and costs against any party as the court deems appropriate, *including a party aggrieved by a violation of the Act,* and shall direct in its order which of the parties to the case shall pay such fees and costs. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

C. The appointed counsel may issue a subpoena duces tecum for all discoverable electronic and print files, records, documents, and memoranda regarding the transactional basis for the suit. If requested in the subpoena, the plaintiff shall also deliver all documents or information concerning the location of the servicemember.

D. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding a section numbered 51.5-44.1, relating to the rights of persons with disabilities in public places and places of public accommodation; fraudulent representation of a service dog or hearing dog; penalty.

[S 363]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 51.5-44.1 as follows:

§ 51.5-44.1. Fraudulent representation of a service dog or hearing dog; penalty.

Any person who knowingly and willfully fits a dog with a harness, collar, vest, or sign, or uses an identification card commonly used by a person with a disability, in order to represent that the dog is a service dog or hearing dog to fraudulently gain public access for such dog pursuant to provisions in § 51.5-44 is guilty of a Class 4 misdemeanor.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 15.2-2119 of the Code of Virginia, relating to sewer authorities; liens for delinquent charges.

[S 542]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2119 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2119. Fees and charges for water and sewer services.

A. For water and sewer services provided by localities, fees and charges may be charged to and collected from (i) any person contracting for the same; (ii) the owner who is the occupant of the property or where a single meter serves multiple units; (iii) a lessee or tenant, provided that the lessee or tenant has written authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant with such fees and charges applicable for water and sewer services (a) which directly or indirectly is or has been connected with the sewage disposal system and (b) from or on which sewage or industrial wastes originate or have originated and have directly or indirectly entered or will enter the sewage disposal system; or (iv) any user of a municipality's water or sewer system with respect to combined sanitary and storm water sewer systems where the user is a resident of the municipality and the purpose of any such fee or charge is related to the control of combined sewer overflow discharges from such systems. Such fees and charges shall be practicable and equitable and payable as directed by the respective locality operating or providing for the operation of the water or sewer system. A locality providing water and sewer services may establish, by adoption of a resolution, that water and sewer services may be provided to a lessee or tenant pursuant to provision (iii) without obtaining an authorization form from the property owner. For purposes of this section, a written or electronic authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant substantially in the form as follows shall be sufficient compliance with this section:

DATE

[INSERT NAME OF WATER AND SEWER SERVICES PROVIDER AND ADDRESS]

_____

_____

_____

RE: [INSERT FULL TENANT NAME AND ADDRESS]

_____

_____

_____

To Whom It May Concern:

[INSERT TENANT NAME] has entered into a lease for the property located at [INSERT ADDRESS] and is authorized to obtain services at this address as a tenant of [INSERT PROPERTY OWNER NAME].

Signed: _____

PROPERTY OWNER

B. Such fees and charges, being in the nature of use or service charges, shall, as nearly as the governing body deems practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or any other factors determining the type, class and amount of use or service of the sewage disposal system, or any combination of such factors, or on such other basis as the governing body may determine. Such fees and charges shall be due and payable at such time as the governing body may determine, and the governing body may require the same to be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees and charges is hereby declared to be revenue of such sewage disposal system.

C. Water and sewer connection fees established by any locality shall be fair and reasonable. Such fees shall be reviewed by the locality periodically and shall be adjusted, if necessary, to assure that they

continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

D. If the fees and charges charged for water service or the use and services of the sewage disposal system by or in connection with any real estate are not paid when due, a penalty and interest shall at that time be owed as provided for by general law, and the owner, lessee or tenant, as the case may be, of such real estate shall, until such fees and charges are paid with such penalty and interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system. If such owner, lessee or tenant does not pay the full amount of charges, penalty and interest for water provided or cease such disposal within two months thereafter, the locality or person supplying water or sewage disposal services for the use of such real estate shall cease supplying water and sewage disposal services thereto unless the health officers certify that shutting off the water will endanger the health of the occupants of the premises or the health of others.

E. Such fees and charges, and any penalty and interest thereon, shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.

A lien may be placed on the property in the amount of *(i)* up to three months of delinquent water and sewer charges *when the water or sewer is, or both are, supplied to a lessee or tenant pursuant to this section; (ii) when the water or sewer is, or both are, provided to the property owner, up to the number of months of delinquent water or sewer charges, (iii)* any applicable penalties and interest on such delinquent charges, and *(iv)* reasonable attorney fees and other costs of collection not exceeding 20 percent of such delinquent charges. In no case shall a lien for less than $25 be placed against the property. In the case of services to a lessee or tenant, if the locality does not cease supplying water to the lessee or tenant 60 days after the bill becomes delinquent, unless water is required to be provided pursuant to subsection D or other applicable law, there shall be no lien placed on the property for charges and collection costs beyond the 60-day period and no recourse against the property owner for service beyond the 60-day period.

F. Unless the locality has adopted a resolution to not require authorization from land owners for water and sewer service provided to lessees or tenants pursuant to subsection A, a lien may be placed on the property for water and sewer services used by a lessee or tenant only if the locality has (i) advised the owner of the property in writing that a lien may be placed on the property if the lessee or tenant fails to pay any delinquent water and sewer charges; (ii) mailed by first-class mail to the owner of the property, or sent electronically if requested by the owner, at the address listed in the written authorization from the owner of the property (or such other address as the owner may provide), a duplicate copy of the final bill sent to the lessee or tenant at the time of sending the final bill to such lessee or tenant; (iii) collected a security deposit from the lessee or tenant as reasonably determined by the locality to be sufficient to collateralize the locality for not less than three and no more than five months of water and sewer charges; (iv) has applied the security deposit held by the locality to the payment of the outstanding balance; (v) has employed reasonable collection efforts and practices to collect amounts due from a lessee or a tenant including filing for the Set-Off Debt Collection Program if the locality is a participant; and (vi) has provided the property owner with 30 days' written notice with a copy of the final bill to allow the property owner a reasonable opportunity to pay the amount of any outstanding balance and avoid the recordation of a lien against the property. If the property owner fails to pay the amount of the outstanding balance within the 30-day period, the locality may record a lien in the amount of the outstanding balance against the property owner. Upon payment of the outstanding balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality in the amount paid by the property owner. The locality shall execute all documents necessary to perfect such subrogation in favor of the property owner.

G. When the owner has provided the lessee or tenant with written authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant, nothing herein shall be construed to authorize the locality to require (i) the owner to put water and sewer services in the name of the owner, except in the case where a single meter serves multiple tenant units, or (ii) a security deposit or a guarantee of payment from an owner of property.

H. The locality shall not require a security deposit from the lessee or tenant to obtain water and sewer services in the name of such lessee or tenant if such lessee or tenant presents to the locality a landlord authorization letter which has attached documentation showing such lessee or tenant receives need-based local, state, or federal rental assistance, and the absence of a security deposit shall not prevent a locality from exercising its lien rights as authorized under subsection F.

I. Unless a lien has been recorded against the property owner, the locality shall not deny service to a new tenant who is requesting service at a particular property address based upon the fact that a former tenant has not paid any outstanding fees and charges charged for the use and services in the name of the

former previous tenant. In addition, the locality shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner. If the property owner provides the locality a request to be notified of a tenant's delinquent water bill and provides an email address, the locality shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

J. Notwithstanding any provision of law to the contrary, any town with a population between 11,000 and 14,000, with the concurrence of the affected county, which provides and operates sewer services outside its boundaries may provide sewer services to industrial and commercial users outside its boundaries and collect such compensation therefor as may be contracted for between the town and such user. Such town shall not thereby be obligated to provide sewer services to any other users outside its boundaries.

K. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such delinquent charges is entered in the official records of the office of the clerk of the circuit court in the jurisdiction in which the real estate is located. The clerk shall make and index the entries in the clerk's official records for a fee of $5 per entry, to be paid by the locality and added to the amount of the lien.

L. The lien on any real estate may be discharged by the payment to the locality of the total lien amount and the interest which has accrued to the date of the payment. The locality shall deliver a fully executed lien release substantially in the form set forth in this subsection to the person making the payment. The locality shall provide the fully executed lien release to the person who made payment within 10 business days of such payment if the person who made such payment did not personally appear at the time of such payment. Upon presentation of such lien release, the clerk shall mark the lien satisfied. There shall be no separate clerk's fee for such lien release. For purposes of this section, a lien release of the water and sewer lien substantially in the form as follows shall be sufficient compliance with this section:

Prepared By and When
Recorded Return to:

_____

_____

_____

Tax Parcel/GPIN Number: _____

CERTIFICATE OF RELEASE OF WATER AND SEWER SERVICE LIEN

Pursuant to Va. Code Annotated § 15.2-2119 (L), this release is exempt from recordation fees.

Date Lien Recorded: _____ Instrument Deed Book No.: _____

Grantee for Index Purposes: _____

Claim Asserted: Delinquent water and sewer service charges in the amount of $_____.

Description of Property: [Insert name of property owner and tax map parcel/GPIN Number]

The above-mentioned lien is hereby released.

BY: _____

TITLE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

Acknowledged, subscribed, and sworn to before me this _____ day of _____, by _____ as _____ of the [Insert Water/Sewer Provider Name] on behalf of [Insert Water/Sewer Provider Name].

_____

Notary Public

My commission expires: _____

Notary Registration Number: _____

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to address local ordinances concerning the installation or use of landscape cover materials.

[S 736]

Approved

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Notwithstanding any provision of law, general or special, any ordinance in effect and any ordinance adopted by the governing body of the City of Harrisonburg shall not include in any local fire prevention regulations a requirement that an owner of real property who has an occupancy permit issued by the City use specific landscape cover materials or retrofit existing landscape cover materials at such property.*

ENROLLED

SB736ER

SERVICEMEMBERS CIVIL RELIEF ACT AND AMENDMENT

Recommended Provisions to be Included in SCRA Waivers:

- Waiver of right to a stay of judgment under Section 524 of the SCRA, and eviction rights under Section 531 of the SCRA.
- Agreement to pay rent by allotment in the event of non-payment of rent under Section 531(d) of the SCRA.
- Agreement to notify Landlord in the event of a change in military status or receipt of applicable orders, and provide Landlord with a copy of the orders.

Prepared by Barrie B. Bowers, Esq.

1802 Bayberry Court, Suite 403
chipdicks@futurelaw.net
bbowers@futurelaw.net
Richmond, Virginia 23226
804.225.5506
www.futurelaw.net

SERVICEMEMBERS CIVIL RELIEF ACT

ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

CODIFICATION

The Servicemembers Civil Relief Act, comprising sections 501 to 515 and 516 to 597b of this Appendix, was originally enacted as act Oct. 17, 1940, ch. 888, 54 Stat. 1178, known as the Soldiers' and Sailors' Civil Relief Act of 1940, and amended by acts Oct. 6, 1942, ch. 581, 56 Stat. 769; July 3, 1944, ch. 397, 58 Stat. 722; Apr. 3, 1948, ch. 170, 62 Stat. 160; June 23, 1952, ch. 450, 66 Stat. 151; July 11, 1956, ch. 570, 70 Stat. 528; Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1105; Pub. L. 86–721, Sept. 8, 1960, 74 Stat. 820; Pub. L. 87–771, Oct. 9, 1962, 76 Stat. 768; Pub. L. 89–358, Mar. 3, 1966, 80 Stat. 12; Pub. L. 92–540, Oct. 24, 1972, 86 Stat. 1074; Pub. L. 102–12, Mar. 18, 1991, 105 Stat. 34; Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 186; Pub. L. 107–107, Dec. 28, 2001, 115 Stat. 1012; Pub. L. 107–330, Dec. 6, 2002, 116 Stat. 2820. Sections of the act Oct. 17, 1940, are shown herein, however, as having been added by Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2835, without reference to the intervening amendments listed above because of the extensive revision of act Oct. 17, 1940, by Pub. L. 108–189.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1918

Former provisions on this subject were contained in act Mar. 8, 1918, ch. 20, 40 Stat. 440, known as the Soldiers' and Sailors' Civil Relief Act of 1918, section 101 et seq. of this Appendix.

§501. Short title

This Act [sections 501 to 515 and 516 to 597b of this Appendix] may be cited as the "Servicemembers Civil Relief Act".

(Oct. 17, 1940, ch. 888, §1(a), as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2835.)

PRIOR PROVISIONS

A prior section 501, act Oct. 17, 1940, ch. 888, §1, 54 Stat. 1178, provided that this Act could be cited as the Soldiers' and Sailors' Relief Act of 1940, prior to the general amendment of this Act by Pub. L. 108–189.

EFFECTIVE DATE

Pub. L. 108–189, §3, Dec. 19, 2003, 117 Stat. 2866, provided that: "The amendment made by section 1 [enacting sections 501 to 515 and 516 to 596 of this Appendix] shall apply to any case that is not final before the date of the enactment of this Act [Dec. 19, 2003]."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–286, §1, Dec. 18, 2014, 128 Stat. 3093, provided that: "This Act [amending provisions set out as notes under section 533 of this Appendix] may be cited as the 'Foreclosure Relief and Extension for Servicemembers Act of 2014'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–346, §1, Dec. 29, 2010, 124 Stat. 3622, provided that: "This Act [amending provisions set out as a note under section 533 of this Appendix] may be cited as the 'Helping Heroes Keep Their Homes Act of 2010'."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–97, §1, Nov. 11, 2009, 123 Stat. 3007, provided that: "This Act [amending sections 568, 571, and 595 of this Appendix and enacting provisions set out as notes under sections 568, 571, and 595 of this Appendix] may be cited as the 'Military Spouses Residency Relief Act'."

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–12, §1, Mar. 18, 1991, 105 Stat. 34, provided that: "This Act [enacting sections 518, 592, and 593 of this Appendix, amending sections 511 to 513, 515, 516, 525, 526, 530 to 532, 534, 535, 540 to 545, 547, 564 to 567, 570, 574, 580, 581, 584, and 591 of this Appendix and sections 2021 and 2024 of Title 38, Veterans' Benefits, repealing section 548 of this Appendix, and enacting provisions set out as notes under sections 521 and 530 of this Appendix and sections 2021 and 2024 of Title 38] may be cited as the 'Soldiers' and Sailors' Civil Relief Act Amendments of 1991'."

SHORT TITLE OF 1942 AMENDMENT

Act Oct. 6, 1942, ch. 581, §1, 56 Stat. 769, provided: "That this Act [enacting sections 514 to 517, 526, 533 to 536, 574, and 590 of this Appendix and amending sections 513, 525, 530 to 532, 540 to 548, 560, 569, and 572 of this Appendix] may be cited as the 'Soldiers' and Sailors' Civil Relief Act Amendments of 1942'."

§502. Purpose

The purposes of this Act [sections 501 to 515 and 516 to 597b of this Appendix] are—

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

(Oct. 17, 1940, ch. 888, §2, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2836.)

PRIOR PROVISIONS

A prior section 510, act Oct. 17, 1940, ch. 888, art. I, §100, 54 Stat. 1179, stated purpose of this Act, prior to the general amendment of this Act by Pub. L. 108–189.

§511. Definitions

For the purposes of this Act [sections 501 to 515 and 516 to 597b of this Appendix]:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) Military service

The term "military service" means—

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) Period of military service

The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Dependent

The term "dependent", with respect to a servicemember, means—

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

(5) Court

The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) State

The term "State" includes—

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) Secretary concerned

The term "Secretary concerned"—

(A) with respect to a member of the armed forces, has the meaning given that term in section

101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) Motor vehicle

The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

(9) Judgment

The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

(Oct. 17, 1940, ch. 888, title I, §101, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2836; amended Pub. L. 108–454, title VII, §701, Dec. 10, 2004, 118 Stat. 3624.)

PRIOR PROVISIONS

A prior section 511, acts Oct. 17, 1940, ch. 888, art. I, §101, 54 Stat. 1179; Pub. L. 92–540, title V, §504(1), Oct. 24, 1972, 86 Stat. 1098; Pub. L. 102–12, §9(1), Mar. 18, 1991, 105 Stat. 38; Pub. L. 107–330, title III, §305, Dec. 6, 2002, 116 Stat. 2826, related to definitions, prior to the general amendment of this Act by Pub. L. 108–189.

AMENDMENTS

2004—Par. (9). Pub. L. 108–454 added par. (9).

§512. Jurisdiction and applicability of Act

(a) Jurisdiction

This Act [sections 501 to 515 and 516 to 597b of this Appendix] applies to—

(1) the United States;

(2) each of the States, including the political subdivisions thereof; and

(3) all territory subject to the jurisdiction of the United States.

(b) Applicability to proceedings

This Act [sections 501 to 515 and 516 to 597b of this Appendix] applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

(c) Court in which application may be made

When under this Act [sections 501 to 515 and 516 to 597b of this Appendix] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

(Oct. 17, 1940, ch. 888, title I, §102, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2837.)

PRIOR PROVISIONS

A prior section 512, acts Oct. 17, 1940, ch. 888, art. I, §102, 54 Stat. 1179; Pub. L. 102–12, §9(2), Mar. 18, 1991, 105 Stat. 39, related to territorial application, jurisdiction of courts, and form of procedure, prior to the general amendment of this Act by Pub. L. 108–189.

§513. Protection of persons secondarily liable

(a) Extension of protection when actions stayed, postponed, or suspended

Whenever pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix] a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of

a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) Vacation or set-aside of judgments

When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix], the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) Bail bond not to be enforced during period of military service

A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

(d) Waiver of rights

(1) Waivers not precluded

This Act [sections 501 to 515 and 516 to 597b of this Appendix] does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) Waiver invalidated upon entrance to military service

If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix].

(Oct. 17, 1940, ch. 888, title I, §103, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2838.)

PRIOR PROVISIONS

A prior section 513, acts Oct. 17, 1940, ch. 888, art. I, §103, 54 Stat. 1179; Oct. 6, 1942, ch. 581, §§2, 3, 56 Stat. 769; Pub. L. 102–12, §9(3), Mar. 18, 1991, 105 Stat. 39, related to protection of persons secondarily liable, prior to the general amendment of this Act by Pub. L. 108–189.

§514. Extension of protections to citizens serving with allied forces

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [sections 501 to 515 and 516 to 597b of this Appendix] if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

(Oct. 17, 1940, ch. 888, title I, §104, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2839.)

PRIOR PROVISIONS

A prior section 514, act Oct. 17, 1940, ch. 888, art. I, §104, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770, related to extension of benefits to citizens serving with forces of war allies, prior to the general amendment of this Act by Pub. L. 108–189.

§515. Notification of benefits

The Secretary concerned shall ensure that notice of the benefits accorded by this Act [sections 501 to 515 and 516 to 597b of this Appendix] is provided in writing to persons in military service and to persons entering military service.

(Oct. 17, 1940, ch. 888, title I, §105, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2839.)

PRIOR PROVISIONS

A prior section 515, act Oct. 17, 1940, ch. 888, art. I, §105, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770; amended Pub. L. 102–12, §9(4), Mar. 18, 1991, 105 Stat. 39, related to notice of benefits to persons in and persons entering military service, prior to the general amendment of this Act by Pub. L. 108–189.

§515a. Information for members of the Armed Forces and their dependents on rights and protections of the Servicemembers Civil Relief Act

(a) Outreach to members

The Secretary concerned shall provide to each member of the Armed Forces under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

(b) Time of provision

The information required to be provided under subsection (a) to a member shall be provided at the following times:

(1) During the initial orientation training of the member.

(2) In the case of a member of a reserve component, during the initial orientation training of the member and when the member is mobilized or otherwise individually called or ordered to active duty for a period of more than one year.

(3) At such other times as the Secretary concerned considers appropriate.

(c) Outreach to dependents

The Secretary concerned may provide to the adult dependents of members under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act.

(d) Definitions

In this section, the terms "dependent" and "Secretary concerned" have the meanings given such terms in section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511).

(Pub. L. 109–163, div. A, title VI, §690, Jan. 6, 2006, 119 Stat. 3337.)

REFERENCES IN TEXT

The Servicemembers Civil Relief Act, referred to in subsecs. (a) and (c), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of this Appendix. For complete classification of this Act to the Code, see section 501 of this Appendix and Tables.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2006, and not as part of the Servicemembers Civil Relief Act which comprises sections 501 to 515 and 516 to 597b of this Appendix.

§516. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction

(a) Reserves ordered to report for military service

A member of a reserve component who is ordered to report for military service is entitled to the

rights and protections of this title and titles II and III [sections 511 to 515, 516 to 519, 521 to 527, and 531 to 538 of this Appendix] during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction

A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III [sections 511 to 515, 516 to 519, 521 to 527, and 531 to 538 of this Appendix] during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

(Oct. 17, 1940, ch. 888, title I, §106, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2839.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of this Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of this Appendix and Tables.

PRIOR PROVISIONS

A prior section 516, act Oct. 17, 1940, ch. 888, art. I, §106, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770; amended Pub. L. 102–12, §9(5), Mar. 18, 1991, 105 Stat. 39, related to extension of benefits to persons ordered to report for induction or military service, prior to the general amendment of this Act by Pub. L. 108–189.

§517. Waiver of rights pursuant to written agreement

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 515 and 516 to 597b of this Appendix]. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of—

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) Prominent display of certain contract rights waivers

Any waiver in writing of a right or protection provided by this Act [sections 501 to 515 and 516 to 597b of this Appendix] that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) Coverage of periods after orders received

For the purposes of this section—

(1) a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.

(Oct. 17, 1940, ch. 888, title I, §107, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2839; amended Pub. L. 108–454, title VII, §702, Dec. 10, 2004, 118 Stat. 3624.)

PRIOR PROVISIONS

A prior section 517, act Oct. 17, 1940, ch. 888, art. I, §107, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770, related to effect on rights and remedies pursuant to written agreements entered after commencement of military service, prior to the general amendment of this Act by Pub. L. 108–189.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–454, §702(1), inserted after first sentence: "Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies."

Subsecs. (c), (d). Pub. L. 108–454, §702(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

§518. Exercise of rights under Act not to affect certain future financial transactions

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

(2) With respect to a credit transaction between a creditor and the servicemember—

(A) a denial or revocation of credit by the creditor;

(B) a change by the creditor in the terms of an existing credit arrangement; or

(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

(4) A refusal by an insurer to insure the servicemember.

(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

(6) A change in the terms offered or conditions required for the issuance of insurance.

(Oct. 17, 1940, ch. 888, title I, §108, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2840.)

PRIOR PROVISIONS

A prior section 518, act Oct. 17, 1940, ch. 888, art. I, §108, as added Pub. L. 102–12, §7, Mar. 18, 1991, 105 Stat. 38, related to the effect of certain future financial transactions on the exercise of rights, prior to the general amendment of this Act by Pub. L. 108–189.

§519. Legal representatives

(a) Representative

A legal representative of a servicemember for purposes of this Act [sections 501 to 515 and 516 to 597b of this Appendix] is either of the following:

(1) An attorney acting on the behalf of a servicemember.

(2) An individual possessing a power of attorney.

(b) Application

Whenever the term "servicemember" is used in this Act [sections 501 to 515 and 516 to 597b of this Appendix], such term shall be treated as including a reference to a legal representative of the servicemember.

(Oct. 17, 1940, ch. 888, title I, §109, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2840.)

TITLE II—GENERAL RELIEF

PRIOR PROVISIONS

A prior section 520, acts Oct. 17, 1940, ch. 888, art. II, §200, 54 Stat. 1180; Pub. L. 86–721, §§1, 2, Sept. 8, 1960, 74 Stat. 820, related to default judgments, affidavits, bonds, and attorneys for persons in service, prior to the general amendment of this Act by Pub. L. 108–189. See section 521 of this Appendix.

§521. Protection of servicemembers against default judgments

(a) Applicability of section

This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation

or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 515 and 516 to 597b of this Appendix].

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522 of this Appendix].

(f) Section 202 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [section 522 of this Appendix].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 515 and 516 to 597b of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

(Oct. 17, 1940, ch. 888, title II, §201, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2840; amended Pub. L. 110–181, div. A, title V, §584(a), Jan. 28, 2008, 122 Stat. 128.)

PRIOR PROVISIONS

A prior section 521, act Oct. 17, 1940, ch. 888, art. II, §201, 54 Stat. 1181, related to stay of proceedings where military service affects conduct thereof, prior to the general amendment of this Act by Pub. L. 108–189. See section 522 of this Appendix.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted ", including any child custody proceeding," after "proceeding".

§522. Stay of proceedings when servicemember has notice

(a) Applicability of section

This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section—

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

(b) Stay of proceedings

(1) Authority for stay

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay

An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) Application not a waiver of defenses

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) Additional stay

(1) Application

A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 201

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [section 52- 112 - Appendix].

(f) Inapplicability to section 301

The protections of this section do not apply to section 301 [section 531 of this Appendix].

(Oct. 17, 1940, ch. 888, title II, §202, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2842; amended Pub. L. 108–454, title VII, §703, Dec. 10, 2004, 118 Stat. 3624; Pub. L. 110–181, div. A, title V, §584(b), Jan. 28, 2008, 122 Stat. 128.)

PRIOR PROVISIONS

A prior section 522, act Oct. 17, 1940, ch. 888, art. II, §202, 54 Stat. 1181, related to fines and penalties on contracts, prior to the general amendment of this Act by Pub. L. 108–189. See section 523 of this Appendix.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted ", including any child custody proceeding," after "civil action or proceeding" in introductory provisions.

2004—Subsec. (a). Pub. L. 108–454 inserted "plaintiff or" before "defendant" in introductory provisions.

STAY OF JUDICIAL PROCEEDINGS

Pub. L. 102–12, §6, Mar. 18, 1991, 105 Stat. 37, provided that:

"(a) STAY OF ACTION OR PROCEEDING.—In any judicial action or proceeding (other than a criminal proceeding) in which a member of the Armed Forces described in subsection (b) is involved (either as plaintiff or defendant), the court shall, upon application by such member (or some other person on the member's behalf) at any stage before final judgment is entered, stay the action or proceeding until a date after June 30, 1991.

"(b) MEMBERS COVERED.—A member of the Armed Forces is covered by subsection (a) if at the time of application for the stay of a judicial action or proceeding the member—

"(1) is on active duty; and

"(2) is serving outside the State in which the court having jurisdiction over the action or proceeding is located.

"(c) DEFINITION.—For purposes of this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam."

§523. Fines and penalties under contracts

(a) Prohibition of penalties

When an action for compliance with the terms of a contract is stayed pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix], a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

(1) the servicemember was in military service at the time the fine or penalty was incurred; and

(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

(Oct. 17, 1940, ch. 888, title II, §203, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2843.)

PRIOR PROVISIONS

A prior section 523, act Oct. 17, 1940, ch. 888, art. II, §203, 54 Stat. 1181, related to stay or vacation of execution of judgments and attachments, prior to the general amendment of this Act by Pub. L. 108–189. See section 524 of this Appendix.

§524. Stay or vacation of execution of judgments, attachments, and garnishments

(a) Court action upon material affect determination

If a servicemember, in the opinion of the cc

aterially affected by reason of military service

in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

(1) stay the execution of any judgment or order entered against the servicemember; and

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability

This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

(Oct. 17, 1940, ch. 888, title II, §204, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2843.)

PRIOR PROVISIONS

A prior section 524, act Oct. 17, 1940, ch. 888, art. II, §204, 54 Stat. 1181, related to duration and term of stays and codefendants not in service, prior to the general amendment of this Act by Pub. L. 108–189. See section 525 of this Appendix.

§525. Duration and term of stays; codefendants not in service

(a) Period of stay

A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act [sections 501 to 515 and 516 to 597b of this Appendix] by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants

If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act [sections 501 to 515 and 516 to 597b of this Appendix], the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section

This section does not apply to sections 202 and 701 [sections 522 and 591 of this Appendix].

(Oct. 17, 1940, ch. 888, title II, §205, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2844.)

PRIOR PROVISIONS

A prior section 525, acts Oct. 17, 1940, ch. 888, art. II, §205, 54 Stat. 1181; Oct. 6, 1942, ch. 581, §5, 56 Stat. 770; Pub. L. 102–12, §9(6), Mar. 18, 1991, 105 Stat. 39, related to statutes of limitations as affected by period of service, prior to the general amendment of this Act by Pub. L. 108–189. See section 526 of this Appendix.

§526. Statute of limitations

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws

This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

(Oct. 17, 1940, ch. 888, title II, §206, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2844.)

REFERENCES IN TEXT

The internal revenue laws of the United States, referred to in subsec. (c), are classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 526, act Oct. 17, 1940, ch. 888, art. II, §206, as added Oct. 6, 1942, ch. 581, §6, 56 Stat. 771; amended Pub. L. 102–12, §9(7), Mar. 18, 1991, 105 Stat. 39, related to maximum rate of interest, prior to the general amendment of this Act by Pub. L. 108–189. See section 527 of this Appendix.

§527. Maximum rate of interest on debts incurred before military service

(a) Interest rate limitation

(1) Limitation to 6 percent

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent—

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B) during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent

Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal

The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation

(1) Written notice to creditor

In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty

Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Definitions

In this section:

(1) Interest

The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) Obligation or liability

The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) Penalty

Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

(Oct. 17, 1940, ch. 888, title II, §207, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2844; amended Pub. L. 110–289, div. B, title II, §2203(b), July 30, 2008, 122 Stat. 2849; Pub. L. 110–389, title VIII, §807, Oct. 10, 2008, 122 Stat. 4189; Pub. L. 111–275, title III, §303(b)(1), Oct. 13, 2010, 124 Stat. 2877.)

PRIOR PROVISIONS

A prior section 527, act Oct. 17, 1940, ch. 888, art. II, §207, as added Oct. 21, 1942, ch. 619, title V, §507(b)(2)(B), 56 Stat. 964, related to limitations prescribed by internal revenue laws as affected by period of service, prior to the general amendment of this Act by Pub. L. 108–189. See section 526 of this Appendix.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–275 struck out subsec. (f). Text read as follows: "The penalties provided under subsection (e) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages."

2008—Subsec. (a)(1). Pub. L. 110–289, §2203(b)(1), substituted "in excess of 6 percent—" for "in excess of 6 percent per year during the period of military service." and added subpars. (A) and (B).

Subsec. (d). Pub. L. 110–289, §2203(b)(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "As used in this section, the term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability."

Subsecs. (e), (f). Pub. L. 110–389 added subsecs. (e) and (f).

§528. Child custody protection

(a) Duration of temporary custody order based on certain deployments

If a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a servicemember, the court shall require that the temporary order shall expire not later than the period justified by the deployment of the servicemember.

(b) Limitation on consideration of member's deployment in determination of child's best interest

If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, no court may consider the absence of the servicemember by reason of deployment, or the possibility of deployment, as the sole factor in determining the best interest of the child.

(c) No Federal jurisdiction or right of action or removal

Nothing in this section shall create a Federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal.

(d) Preemption

In any case where State law applicable to a child custody proceeding involving a temporary order as contemplated in this section provides a higher standard of protection to the rights of the parent who is a deploying servicemember than the rights provided under this section with respect to such

temporary order, the appropriate court shall apply the higher State standard.

(e) Deployment defined

In this section, the term "deployment" means the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders—

(1) that are designated as unaccompanied;

(2) for which dependent travel is not authorized; or

(3) that otherwise do not permit the movement of family members to that location.

(Oct. 17, 1940, ch. 888, title II, §208, as added Pub. L. 113–291, div. A, title V, §566(a), Dec. 19, 2014, 128 Stat. 3384.)

TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES, TELEPHONE SERVICE CONTRACTS

PRIOR PROVISIONS

A prior section 530, acts Oct. 17, 1940, ch. 888, art. III, §300, 54 Stat. 1181; Oct. 6, 1942, ch. 581, §8, 56 Stat. 771; Pub. L. 89–358, §10, Mar. 3, 1966, 80 Stat. 28; Pub. L. 102–12, §§2(a), (b), 9(8), Mar. 18, 1991, 105 Stat. 34, 39, related to eviction or distress during military service, prior to the general amendment of this Act by Pub. L. 108–189. See section 531 of this Appendix.

AMENDMENTS

2010—Pub. L. 111–275, title III, §302(b), Oct. 13, 2010, 124 Stat. 2876, inserted ", TELEPHONE SERVICE CONTRACTS" after "LEASES" in heading.

§531. Evictions and distress

(a) Court-ordered eviction

(1) In general

Except by court order, a landlord (or another person with paramount title) may not—

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed $2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) Housing price inflation adjustment

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph—

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which—

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) Publication of housing price inflation adjustment

The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) Stay of execution

(1) Court authority

Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) Relief to landlord

If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) Misdemeanor

Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Rent allotment from pay of servicemember

To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) Limitation of applicability

Section 202 [section 522 of this Appendix] is not applicable to this section.

(Oct. 17, 1940, ch. 888, title III, §301, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2845; amended Pub. L. 111–275, title III, §303(b)(2), Oct. 13, 2010, 124 Stat. 2877.)

PRIOR PROVISIONS

A prior section 531, acts Oct. 17, 1940, ch. 888, art. III, §301, 54 Stat. 1182; Oct. 6, 1942, ch. 581, §9(a), (c), (d), 56 Stat. 771; Pub. L. 102–12, §9(9), Mar. 18, 1991, 105 Stat. 40, related to installment contracts for purchase of property, prior to the general amendment of this Act by Pub. L. 108–189. See section 532 of this Appendix.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–275 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to penalties.

§532. Protection under installment contracts for purchase or lease

(a) Protection upon breach of contract

(1) Protection after entering military service

After a servicemember enters military service, a contract by the servicemember for—

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during

that person's military service, nor may the property be repossessed for such breach without a court order.

(2) Applicability

This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) Misdemeanor

A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act [section 517 of this Appendix], or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(c) Authority of court

In a hearing based on this section, the court—

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

(Oct. 17, 1940, ch. 888, title III, §302, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2846; amended Pub. L. 111–275, title III, §303(b)(3), Oct. 13, 2010, 124 Stat. 2878.)

PRIOR PROVISIONS

A prior section 532, acts Oct. 17, 1940, ch. 888, art. III, §302, 54 Stat. 1182; Oct. 6, 1942, ch. 581, §§9(b), (c), 10, 56 Stat. 771, 772; June 23, 1952, ch. 450, 66 Stat. 151; Pub. L. 102–12, §9(9), (10), Mar. 18, 1991, 105 Stat. 40, related to mortgages and trust deeds, prior to the general amendment of this Act by Pub. L. 108–189. See section 533 of this Appendix.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–275 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to penalties.

§533. Mortgages and trust deeds

(a) Mortgage as security

This section applies only to an obligation on real or personal property owned by a servicemember that—

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation

In an action filed during, or within one year after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within one year after, the period of the servicemember's military service except—

(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

(2) if made pursuant to an agreement as provided in section 107 [section 517 of this Appendix].

(d) Misdemeanor

A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(Oct. 17, 1940, ch. 888, title III, §303, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2847; amended Pub. L. 110–289, div. B, title II, §2203(a), July 30, 2008, 122 Stat. 2849; Pub. L. 111–275, title III, §303(b)(4), Oct. 13, 2010, 124 Stat. 2878; Pub. L. 112–154, title VII, §710(a), (b), (d)(3), Aug. 6, 2012, 126 Stat. 1208.)

AMENDMENT OF SUBSECTIONS (B) AND (C)

For termination of amendment and revival of prior provisions by section 710(d)(1), (3) of Pub. L. 112–154, see Effective and Termination Dates of 2012 Amendment; Revival notes below.

PRIOR PROVISIONS

A prior section 533, act Oct. 17, 1940, ch. 888, art. III, §303, as added Oct. 6, 1942, ch. 581, §12, 56 Stat. 772, related to settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property, prior to the general amendment of this Act by Pub. L. 108–189. See section 534 of this Appendix.

Another prior section 533, act Oct. 17, 1940, ch. 888, art. III, §303, 54 Stat. 1183, related to stay of action to resume possession of motor vehicle, tractor, or their accessories, encumbered by purchase money mortgage, conditional sales contract, etc., prior to repeal by act Oct. 6, 1942, ch. 581, §11, 56 Stat. 772.

AMENDMENTS

2012—Subsecs. (b), (c). Pub. L. 112–154, §710(d)(3), revived the provisions of subsecs. (b) and (c) as in effect on July 29, 2008. Effective Jan. 1, 2015, "within 90 days" is substituted for "within one year" in introductory provisions. See Effective and Termination Dates of 2012 Amendment; Revival note below.

Pub. L. 112–154, §710(a), (b), (d)(1), temporarily substituted "within one year" for "within 9 months" in introductory provisions. See Effective and Termination Dates of 2012 Amendment; Revival note below.

2010—Subsec. (d). Pub. L. 111–275 amended subsec. (d) generally. Prior to amendment, subsec. (d) related to penalties.

2008—Subsecs. (b), (c). Pub. L. 110–289 substituted "9 months" for "90 days" in introductory provisions.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT; REVIVAL

Pub. L. 112–154, title VII, §710(c), Aug. 6, 2012, 126 Stat. 1208, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Aug. 6, 2012]."

Pub. L. 112–154, title VII, §710(d)(1), Aug. 6, 2012, 126 Stat. 1208, as amended by Pub. L. 113–286, §2(1), Dec. 18, 2014, 128 Stat. 3093, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall expire on December 31, 2015."

Pub. L. 112–154, title VII, §710(d)(3), Aug. 6, 2012, 126 Stat. 1208, as amended by Pub. L. 113–286, §2(2), Dec. 18, 2014, 128 Stat. 3093, provided that: "Effective January 1, 2016, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533), as in effect on July 29, 2008, are hereby revived."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. B, title II, §2203(c), July 30, 2008, 122 Stat. 2850, as amended by Pub. L. 111–346, §2, Dec. 29, 2010, 124 Stat. 3622; Pub. L. 112–154, title VII, §710(d)(2), Aug. 6, 2012, 126 Stat. 1208, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 30, 2008]."

§534. Settlement of stayed cases relating to personal property

(a) Appraisal of property

When a stay is granted pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix] in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) Equity payment

Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

(Oct. 17, 1940, ch. 888, title III, §304, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2848.)

PRIOR PROVISIONS

A prior section 534, act Oct. 17, 1940, ch. 888, art. III, §304, as added Oct. 6, 1942, ch. 581, §12, 56 Stat. 772; amended Pub. L. 102–12, §9(9), Mar. 18, 1991, 105 Stat. 40, related to termination of leases by lessees, prior to the general amendment of this Act by Pub. L. 108–189. See section 535 of this Appendix.

§535. Termination of residential or motor vehicle leases

(a) Termination by lessee

(1) In general

The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases

A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases

This section applies to the following leases:

(1) Leases of premises

A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles

A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders—

(i) for a change of permanent station—

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination

(1) In general

Termination of a lease under subsection (a) is made—

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice

Delivery of notice under paragraph (1)(A) may be accomplished—

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination

(1) Lease of premises

In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles

In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities

(1) Leases of premises

Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(2) Leases of motor vehicles

Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not

impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Misdemeanor

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(i) Definitions

(1) Military orders

The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) ConUS

The term "continental United States" means the 48 contiguous States and the District of Columbia.

(Oct. 17, 1940, ch. 888, title III, §305, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2848; amended Pub. L. 108–454, title VII, §704, Dec. 10, 2004, 118 Stat. 3624; Pub. L. 111–275, title III, §§301, 303(b)(5), Oct. 13, 2010, 124 Stat. 2875, 2878.)

PRIOR PROVISIONS

A prior section 535, act Oct. 17, 1940, ch. 888, art. III, §305, as added Oct. 6, 1942, ch. 581, §12, 56 Stat. 773; amended Pub. L. 102–12, §9(9), Mar. 18, 1991, 105 Stat. 40, related to protection of assignor of life insurance policy, enforcement of storage liens, and penalties, prior to the general amendment of this Act by Pub. L. 108–189. See sections 536 and 537 of this Appendix.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–275, §301, amended subsec. (e) generally. Prior to amendment, text read as follows: "Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee."

Subsec. (h). Pub. L. 111–275, §303(b)(5), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to penalties.

2004—Subsec. (a). Pub. L. 108–454, §704(a), amended subsec. (a) generally, designating existing provisions as par. (1), inserting par. heading, and adding par. (2).

Subsec. (b)(1)(B). Pub. L. 108–454, §704(c), inserted ", or as an individual in support of a military operation," after "deploy with a military unit".

Subsec. (b)(2)(B). Pub. L. 108–454, §704(b)(1), substituted "military orders—" for "military orders for a permanent change of station outside of the continental United States or to deploy", added cl.(i), and inserted "(ii) to deploy" before "with a military unit".

Subsec. (b)(2)(B)(ii). Pub. L. 108–454, §704(c), inserted ", or as an individual in support of a military operation," after "deploy with a military unit".

Subsec. (i). Pub. L. 108–454, §704(b)(2), added subsec. (i).

§535a. Termination of telephone service contracts

(a) Termination by servicemember

(1) Termination

A servicemember may terminate a contract described in subsection (b) at any time after the date the servicemember receives military orders to relocate for a period of not less than 90 days to a location that does not support the contract.

(2) Notice

In the case that a servicemember terminates a contract as described in paragraph (1), the service provider under the contract shall provide such servicemember with written or electronic notice of the servicemember's rights under such paragraph.

(3) Manner of termination

Termination of a contract under paragraph (1) shall be made by delivery of a written or electronic notice of such termination and a copy of the servicemember's military orders to the service provider, delivered in accordance with industry standards for notification of terminations, together with the date on which the service is to be terminated.

(b) Covered contracts

A contract described in this subsection is a contract for cellular telephone service or telephone exchange service entered into by the servicemember before receiving the military orders referred to in subsection (a)(1).

(c) Retention of telephone number

In the case of a contract terminated under subsection (a) by a servicemember whose period of relocation is for a period of three years or less, the service provider under the contract shall, notwithstanding any other provision of law, allow the servicemember to keep the telephone number the servicemember has under the contract if the servicemember re-subscribes to the service during the 90-day period beginning on the last day of such period of relocation.

(d) Family plans

In the case of a contract for cellular telephone service entered into by any individual in which a servicemember is a designated beneficiary of the contract, the individual who entered into the contract may terminate the contract—

(1) with respect to the servicemember if the servicemember is eligible to terminate contracts pursuant to subsection (a); and

(2) with respect to all of the designated beneficiaries of such contract if all such beneficiaries accompany the servicemember during the servicemember's period of relocation.

(e) Other obligations and liabilities

For any contract terminated under this section, the service provider under the contract may not impose an early termination charge, but any tax or any other obligation or liability of the servicemember that, in accordance with the terms of the contract, is due and unpaid or unperformed at the time of termination of the contract shall be paid or performed by the servicemember. If the servicemember re-subscribes to the service provided under a covered contract during the 90-day

period beginning on the last day of the servicemember's period of relocation, the service provider may not impose a charge for reinstating service, other than the usual and customary charges for the installation or acquisition of customer equipment imposed on any other subscriber.

(f) Return of advance payments

Not later than 60 days after the effective date of the termination of a contract under this section, the service provider under the contract shall refund to the servicemember any fee or other amount to the extent paid for a period extending until after such date, except for the remainder of the monthly or similar billing period in which the termination occurs.

(g) Definitions

For purposes of this section:

(1) The term "cellular telephone service" means commercial mobile service, as that term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

(2) The term "telephone exchange service" has the meaning given that term under section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(Oct. 17, 1940, ch. 888, title III, §305A, as added Pub. L. 110–389, title VIII, §805(a), Oct. 10, 2008, 122 Stat. 4188; amended Pub. L. 111–275, title III, §302(a), Oct. 13, 2010, 124 Stat. 2875.)

AMENDMENTS

2010—Pub. L. 111–275 amended section generally, substituting provisions relating to termination of telephone service contracts for provisions relating to termination or suspension of contracts for cellular telephone service.

§536. Protection of life insurance policy

(a) Assignment of policy protected

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) Exception

The prohibition in subsection (a) shall not apply—

(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

(2) when the premiums on the policy are due and unpaid; or

(3) upon the death of the insured.

(c) Order refused because of material affect

A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) Treatment of guaranteed premiums

For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act [sections 541 to 549 of this Appendix] shall not be considered due and unpaid.

(e) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(Oct. 17, 1940, ch. 888, title III, §306, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2850; amended Pub. L. 111–275, title III, §303(b)(6), Oct. 13, 2010, 124 Stat. 2878.)

PRIOR PROVISIONS

A prior section 536, act Oct. 17, 1940, ch. 888, art. III, §306, as added Oct. 6, 1942, ch. 581, §12, 56 Stat. 773, related to extension of benefits to dependents, prior to the general amendment of this Act by Pub. L. 108–189. See section 538 of this Appendix.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–275 amended subsec. (e) generally. Prior to amendment, subsec. (e) related to penalties.

§537. Enforcement of storage liens

(a) Liens

(1) Limitation on foreclosure or enforcement

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined

For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) Stay of proceedings

In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service—

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303 [section 533 of this Appendix].

(c) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(Oct. 17, 1940, ch. 888, title III, §307, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2851; amended Pub. L. 111–275, title III, §303(b)(7), Oct. 13, 2010, 124 Stat. 2878.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–275 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to penalties.

§538. Extension of protections to dependents

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title [sections 531 to 538 of this Appendix] if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

(Oct. 17, 1940, ch. 888, title III, §308, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2851.)

A prior section 540, acts Oct. 17, 1940, ch. 888, art. IV, §400, 54 Stat. 1183; Oct. 6, 1942, ch. 581, §13, 56 Stat. 773; July 11, 1956, ch. 570, §1, 70 Stat. 528; Pub. L. 102–12, §9(11), Mar. 18, 1991, 105 Stat. 40, related to definitions, prior to the general amendment of this Act by Pub. L. 108–189. See section 541 of this Appendix.

§541. Definitions

For the purposes of this title [sections 541 to 549 of this Appendix]:

(1) Policy

The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

(A) provides that the insurer may not—

(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

(ii) limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) Premium

The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) Insured

The term "insured" means a servicemember whose life is insured under a policy.

(4) Insurer

The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

(Oct. 17, 1940, ch. 888, title IV, §401, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2851.)

PRIOR PROVISIONS

A prior section 541, acts Oct. 17, 1940, ch. 888, art. IV, §401, 54 Stat. 1183; Oct. 6, 1942, ch. 581, §13, 56 Stat. 774; Pub. L. 102–12, §9(12), Mar. 18, 1991, 105 Stat. 40, related to persons entitled to benefits of former article IV of this Act, applications, and amount of insurance protected, prior to the general amendment of this Act by Pub. L. 108–189. See section 542 of this Appendix.

§542. Insurance rights and protections

(a) Rights and protections

The rights and protections under this title [sections 541 to 549 of this Appendix] apply to the insured when—

(1) the insured,

(2) the insured's legal representative, or

(3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

(b) Notification and application

The Secretary of Veterans Affairs shall noti- -cretary concerned of the procedures to be

used to apply for the protections provided under this title [sections 541 to 549 of this Appendix]. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) Limitation on amount

The total amount of life insurance coverage protection provided by this title [sections 541 to 549 of this Appendix] for a servicemember may not exceed $250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

(Oct. 17, 1940, ch. 888, title IV, §402, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2852.)

PRIOR PROVISIONS

A prior section 542, acts Oct. 17, 1940, ch. 888, art. IV, §402, 54 Stat. 1183; Oct. 6, 1942, ch. 581, §13, 56 Stat. 774; Pub. L. 102–12, §9(13), Mar. 18, 1991, 105 Stat. 40, related to form of application, reports to Secretary of Veterans Affairs by insurer, and policy deemed modified upon application for protection, prior to the general amendment of this Act by Pub. L. 108–189. See section 543 of this Appendix.

§543. Application for insurance protection

(a) Application procedure

An application for protection under this title [sections 541 to 549 of this Appendix] shall—

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

(b) Additional requirements

The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title [sections 541 to 549 of this Appendix].

(c) Notice to the Secretary by the insurer

Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) Policy modification

Upon application for protection under this title [sections 541 to 549 of this Appendix], the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

(Oct. 17, 1940, ch. 888, title IV, §403, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2852.)

PRIOR PROVISIONS

A prior section 543, acts Oct. 17, 1940, ch. 888, art. IV, §403, 54 Stat. 1184; Oct. 6, 1942, ch. 581, §13, 56 Stat. 775; Pub. L. 102–12, §9(14), Mar. 18, 1991, 105 Stat. 40, related to determination of policies entitled to protection, notice to parties, and lapse of policies for nonpayment of premiums, prior to the general amendment of this Act by Pub. L. 108–189. See section 544 of this Appendix.

§544. Policies entitled to protection and lapse of policies

(a) Determination

The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title [sections 541 to 549 of this Appendix] and shall notify the insured and the insurer of that determination.

(b) Lapse protection

A policy that the Secretary determines is entitled to protection under this title [sections 541 to 549 of this Appendix] shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) Time application

The protection provided by this title [sections 541 to 549 of this Appendix] applies during the insured's period of military service and for a period of two years thereafter.

(Oct. 17, 1940, ch. 888, title IV, §404, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2853.)

PRIOR PROVISIONS

A prior section 544, acts Oct. 17, 1940, ch. 888, art. IV, §404, 54 Stat. 1184; Oct. 6, 1942, ch. 581, §13, 56 Stat. 775; Pub. L. 102–12, §9(15), Mar. 18, 1991, 105 Stat. 40, related to rights and privileges of insured during period of protection, prior to the general amendment of this Act by Pub. L. 108–189. See section 545 of this Appendix.

§545. Policy restrictions

(a) Dividends

While a policy is protected under this title [sections 541 to 549 of this Appendix], a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) Specific restrictions

While a policy is protected under this title [sections 541 to 549 of this Appendix], cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

(Oct. 17, 1940, ch. 888, title IV, §405, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2853.)

PRIOR PROVISIONS

A prior section 545, acts Oct. 17, 1940, ch. 888, art. IV, §405, 54 Stat. 1184; Oct. 6, 1942, ch. 581, §13, 56 Stat. 775; Pub. L. 102–12, §9(16), Mar. 18, 1991, 105 Stat. 40, related to deduction of unpaid premiums upon settlement of policies maturing during protection, prior to the general amendment of this Act by Pub. L. 108–189. See section 546 of this Appendix.

§546. Deduction of unpaid premiums

(a) Settlement of proceeds

If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title [sections 541 to 549 of this Appendix], the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

(b) Interest rate

If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) Reporting requirement

The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

(Oct. 17, 1940, ch. 888, title IV, §406, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2853.)

PRIOR PROVISIONS

A prior section 546, acts Oct. 17, 1940, ch. 888, art. IV, §406, 54 Stat. 1184; Oct. 6, 1942, ch. 581, §13, 56 Stat. 775; Apr. 3, 1948, ch. 170, §6, 62 Stat. 160, related to guaranty of premiums and interest by United States, settlement of amounts due upon expiration of protection, subrogation of United States, and crediting debt repayments, prior to the general amendment of this Act by Pub. L. 108–189. See section 547 of this Appendix.

§547. Premiums and interest guaranteed by United States

(a) Guarantee of premiums and interest by the United States

(1) Guarantee

Payment of premiums, and interest on premiums at the rate specified in section 406 [section 546 of this Appendix], which become due on a policy under the protection of this title [sections 541 to 549 of this Appendix] is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) Policy termination

If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) Recovery from insured of amounts paid by the United States

(1) Debt payable to the United States

The amount paid by the United States to an insurer under this title [sections 541 to 549 of this Appendix] shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) Collection

Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) Debt not dischargeable in bankruptcy

Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) Crediting of amounts recovered

Any amounts received by the United States as repayment of debts incurred by an insured under this title [sections 541 to 549 of this Appendix] shall be credited to the appropriation for the payment of claims under this title.

(Oct. 17, 1940, ch. 888, title IV, §407, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2853.)

PRIOR PROVISIONS

A prior section 547, acts Oct. 17, 1940, ch. 888, art. IV, §407, 54 Stat. 1185; Oct. 6, 1942, ch. 581, §13, 56 Stat. 775; Pub. L. 85–857, §14(76), Sept. 2, 1958, 72 Stat. 1272; Pub. L. 102–12, §9(17), Mar. 18, 1991, 105 Stat. 40, related to regulations and finality of determinations, prior to the general amendment of this Act by Pub. L. 108–189. See sections 548 and 549 of this Appendix.

§548. Regulations

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title [sections 541 to 549 of this Appendix].

(Oct. 17, 1940, ch. 888, title IV, §408, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2854.)

PRIOR PROVISIONS

A prior section 548, acts Oct. 17, 1940, ch. 888, art. IV, §408, 54 Stat. 1185; Oct. 6, 1942, ch. 581, §13, 56 Stat. 776, related to law governing applications for protection prior to Oct. 6, 1942, prior to repeal by Pub. L. 102–12, §9(18), Mar. 18, 1991, 105 Stat. 40.

§549. Review of findings of fact and conclusions of law

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title [sections 541 to 549 of this Appendix] are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

(Oct. 17, 1940, ch. 888, title IV, §409, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2854.)

PRIOR PROVISIONS

Prior sections 549 to 554 of this Appendix were omitted in the general amendment of article IV of this Act by act Oct. 6, 1942, ch. 581, §13, 56 Stat. 773.

Section 549, act Oct. 17, 1940, ch. 888, art. IV, §409, 54 Stat. 1185, related to deduction of unpaid premiums from proceeds of policies.

Section 550, act Oct. 17, 1940, ch. 888, art. IV, §410, 54 Stat. 1185, related to lapsing of policy for failure to pay past due premiums upon termination of service.

Section 551, act Oct. 17, 1940, ch. 888, art. IV, §411, 54 Stat. 1185, related to accounts stated between insurers and United States.

Section 552, act Oct. 17, 1940, ch. 888, art. IV, §412, 54 Stat. 1185, related to payment of balances due insurers by Secretary of the Treasury.

Section 553, act Oct. 17, 1940, ch. 888, art. IV, §413, 54 Stat. 1186, related to policies excepted from application of article.

Section 554, act Oct. 17, 1940, ch. 888, art. IV, §414, 54 Stat. 1186, related to insurers within application of article.

TITLE V—TAXES AND PUBLIC LANDS

PRIOR PROVISIONS

A prior section 560, acts Oct. 17, 1940, ch. 888, art. V, §500, 54 Stat. 1186; Oct. 6, 1942, ch. 581, §14, 56 Stat. 776, related to taxes respecting personalty, money, credits, or realty, sale of property to enforce collection, redemption of property sold, penalty for nonpayment, and notice of rights to beneficiaries of section, prior to the general amendment of this Act by Pub. L. 108–189. See section 561 of this Appendix.

§561. Taxes respecting personal property, money, credits, and real property

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessme[illegible]ins unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment

Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application

This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

(Oct. 17, 1940, ch. 888, title V, §501, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2854.)

PRIOR PROVISIONS

A prior section 561, act Oct. 17, 1940, ch. 888, art. V, §501, 54 Stat. 1187, related to rights in public lands and grazing lands, prior to the general amendment of this Act by Pub. L. 108–189. See section 562 of this Appendix.

§562. Rights in public lands

(a) Rights not forfeited

The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) Temporary suspension of permits or licenses

If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) Regulations

Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

(Oct. 17, 1940, ch. 888, title V, §502, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2855.)

Act of June 28, 1934, referred to in subsec. (b), is act June 28, 1934, ch. 865, 48 Stat. 1269, as amended, popularly known as the Taylor Grazing Act, which is classified principally to subchapter I (§315 et seq.) of chapter 8A of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 315 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 562, act Oct. 17, 1940, ch. 888, art. V, §502, 54 Stat. 1187, related to homestead entries and settlement claims, prior to the general amendment of this Act by Pub. L. 108–189.

§563. Desert-land entries

(a) Desert-land rights not forfeited

A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation—

(1) for failure to expend any required amount per acre per year in improvements upon the claim;

(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) Service-related disability

If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) Filing requirement

In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

(Oct. 17, 1940, ch. 888, title V, §503, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2856.)

PRIOR PROVISIONS

A prior section 563, act Oct. 17, 1940, ch. 888, art. V, §503, 54 Stat. 1187, related to death or incapacity during or resulting from service as affecting rights and perfection of rights, prior to the general amendment of this Act by Pub. L. 108–189. See section 566 of this Appendix.

§564. Mining claims

(a) Requirements suspended

The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) Requirements

The provisions in section 2324 of the Revis- es that shall not apply under subsection (a) are

those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than $100 worth of labor shall be performed or improvements made during each year.

(c) Period of protection from forfeiture

A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) Filing requirement

In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

(Oct. 17, 1940, ch. 888, title V, §504, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2856.)

PRIOR PROVISIONS

A prior section 564, acts Oct. 17, 1940, ch. 888, art. V, §504, 54 Stat. 1187; Pub. L. 102–12, §9(19), Mar. 18, 1991, 105 Stat. 40, related to desert-land entries and the suspension of requirements, prior to the general amendment of this Act by Pub. L. 108–189. See section 563 of this Appendix.

§565. Mineral permits and leases

(a) Suspension during military service

A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) Notification

In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

(c) Contract modification

This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

(Oct. 17, 1940, ch. 888, title V, §505, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2857.)

PRIOR PROVISIONS

A prior section 565, act Oct. 17, 1940, ch. 888, art. V, §505, 54 Stat. 1188; Pub. L. 102–12, §9(20), Mar. 18, 1991, 105 Stat. 41, related to mining claims and the suspension of requirements, prior to the general amendment of this Act by Pub. L. 108–189. See section 564 of this Appendix.

§566. Perfection or defense of rights

(a) Right to take action not affected

This title [sections 561 to 571 of this Appendix] shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) Affidavits and proofs

(1) In general

A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

(2) Legal status of affidavits

Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State [1] Code.

(Oct. 17, 1940, ch. 888, title V, §506, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2857.)

PRIOR PROVISIONS

A prior section 566, acts Oct. 17, 1940, ch. 888, art. V, §506, 54 Stat. 1188; Pub. L. 102–12, §9(21), Mar. 18, 1991, 105 Stat. 41, related to mineral permits and leases and the suspension of operations and term of permits and leases, prior to the general amendment of this Act by Pub. L. 108–189. See section 565 of this Appendix.

[1] *So in original. Probably should be "States".*

§567. Distribution of information concerning benefits of title

(a) Distribution of information by Secretary concerned

The Secretary concerned shall issue to servicemembers information explaining the provisions of this title [sections 561 to 571 of this Appendix].

(b) Application forms

The Secretary concerned shall provide application forms to servicemembers requesting relief under this title [sections 561 to 571 of this Appendix].

(c) Information from Secretary of the Interior

The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511) [sections 561, 570, and 571 of this Appendix] and related application forms.

(Oct. 17, 1940, ch. 888, title V, §507, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2857.)

PRIOR PROVISIONS

A prior section 567, acts Oct. 17, 1940, ch. 888, art. V, §507, 54 Stat. 1188; Pub. L. 102–12, §9(22), Mar. 18, 1991, 105 Stat. 41, related to right to take action for perfection and defense of rights as unaffected, and affidavits and proofs, prior to the general amendment of this Act by Pub. L. 108–189. See section 566 of this Appendix.

§568. Land rights of servicemembers

(a) No age limitations

Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) Residency requirement

Any requirement related to the establishment of a residence within a limited time shall be

suspended as to entry by a servicemember in military service or the spouse of such servicemember until 180 days after termination of or release from military service.

(c) Entry applications

Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

(Oct. 17, 1940, ch. 888, title V, §508, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2857; amended Pub. L. 111–97, §4(a), Nov. 11, 2009, 123 Stat. 3008.)

PRIOR PROVISIONS

A prior section 568, act Oct. 17, 1940, ch. 888, art. V, §508, 54 Stat. 1189, related to irrigation rights and suspension of residence requirements, prior to the general amendment of this Act by Pub. L. 108–189.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–97 inserted "or the spouse of such servicemember" after "a servicemember in military service".

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–97, §4(b), Nov. 11, 2009, 123 Stat. 3008, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to servicemembers in military service (as defined in section 101 of such Act (50 U.S.C. App. 511)) on or after the date of the enactment of this Act [Nov. 11, 2009]."

§569. Regulations

The Secretary of the Interior may issue regulations necessary to carry out this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511) [sections 561, 570, and 571 of this Appendix].

(Oct. 17, 1940, ch. 888, title V, §509, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2858.)

PRIOR PROVISIONS

A prior section 569, acts Oct. 17, 1940, ch. 888, art. V, §509, 54 Stat. 1189; Oct. 6, 1942, ch. 581, §15, 56 Stat. 776, related to distribution of information concerning benefits of tax and public lands provisions and forms, prior to the general amendment of this Act by Pub. L. 108–189. See section 567 of this Appendix.

§570. Income taxes

(a) Deferral of tax

Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) Accrual of interest or penalty

No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) Statute of limitations

The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) Application limitation

This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986 [26 U.S.C. 3101].

(Oct. 17, 1940, ch. 888, title V, §510, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2858.)

PRIOR PROVISIONS

A prior section 570, acts Oct. 17, 1940, ch. 888, art. V, §510, 54 Stat. 1189; Pub. L. 102–12, §9(23), Mar. 18, 1991, 105 Stat. 41, related to homestead entrymen permitted to leave entries to perform farm labor, prior to the general amendment of this Act by Pub. L. 108–189.

§571. Residence for tax purposes

(a) Residence or domicile

(1) In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Income of a military spouse

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the St- 137 - micile.

(e) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.

(Oct. 17, 1940, ch. 888, title V, §511, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2858; amended Pub. L. 111–97, §3(a), Nov. 11, 2009, 123 Stat. 3008.)

PRIOR PROVISIONS

Prior sections 571 to 574 were omitted in the general amendment of this Act by Pub. L. 108–189.

Section 571, act Oct. 17, 1940, ch. 888, art. V, §511, 54 Stat. 1189, related to land rights of persons under 21. See section 568 of this Appendix.

Section 572, acts Oct. 17, 1940, ch. 888, art. V, §512, 54 Stat. 1190; Oct. 6, 1942, ch. 581, §16, 56 Stat. 776, related to extension of benefits to persons serving with war allies of the United States. See section 514 of this Appendix.

Section 573, act Oct. 17, 1940, ch. 888, art. V, §513, 54 Stat. 1190, related to deferral of income tax collection and the statute of limitations. See section 570 of this Appendix.

Section 574, act Oct. 17, 1940, ch. 888, art. V, §514, as added Oct. 6, 1942, ch. 581, §17, 56 Stat. 777; amended July 3, 1944, ch. 397, §1, 58 Stat. 722; Pub. L. 87–771, Oct. 9, 1962, 76 Stat. 768; Pub. L. 102–12, §9(24), Mar. 18, 1991, 105 Stat. 41, related to residence for tax purposes. See section 571 of this Appendix.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–97, §3(a)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (c). Pub. L. 111–97, §3(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 111–97, §3(a)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 111–97, §3(a)(4)(A), inserted "or the spouse of a servicemember" after "The personal property of a servicemember".

Subsec. (d)(2). Pub. L. 111–97, §3(a)(4)(B), inserted "or the spouse's" after "servicemember's".

Subsecs. (e) to (g). Pub. L. 111–97, §3(a)(2), redesignated subsecs. (d) to (f) as (e) to (g), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–97, §3(b), Nov. 11, 2009, 123 Stat. 3008, provided that: "Subsections (a)(2) and (c) of section 511 of such Act [Servicemembers Civil Relief Act] (50 U.S.C. App. 571), as added by subsection (a) of this section, and the amendments made to such section 511 by subsection (a)(4) of this section [amending this section], shall apply with respect to any return of State or local income tax filed for any taxable year beginning with the taxable year that includes the date of the enactment of this Act [Nov. 11, 2009]."

TITLE VI—ADMINISTRATIVE REMEDIES

PRIOR PROVISIONS

A prior section 580, acts Oct. 17, 1940, ch. 888, art. VI, §600, 54 Stat. 1190; Pub. L. 102–12, §9(25), Mar. 18, 1991, 105 Stat. 41, related to transfers to take advantage of this Act, prior to the general amendment of this Act by Pub. L. 108–189. See section 581 of this Appendix.

§581. Inappropriate use of Act

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act [sections 501 to 515 and 516 to 597b of this Appendix], the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

(Oct. 17, 1940, ch. 888, title VI, §601, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2859.)

PRIOR PROVISIONS

A prior section 581, acts Oct. 17, 1940, ch. 888, art. VI, §601, 54 Stat. 1190; Jan. 20, 1942, ch. 10, §§1, 2, 56 Stat. 10; Pub. L. 102–12, §9(26), Mar. 18, 1991, 105 Stat. 41, related to certificates of service and persons reported missing, prior to the general amendment of this Act by Pub. L. 108–189. See section 582 of this Appendix.

§582. Certificates of service; persons reported missing

(a) Prima facie evidence

In any proceeding under this Act [sections 501 to 515 and 516 to 597b of this Appendix], a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

(1) That a person named is, is not, has been, or has not been in military service.
(2) The time and the place the person entered military service.
(3) The person's residence at the time the person entered military service.
(4) The rank, branch, and unit of military service of the person upon entry.
(5) The inclusive dates of the person's military service.
(6) The monthly pay received by the person at the date of the certificate's issuance.
(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) Certificates

The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) Treatment of servicemembers in missing status

A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [sections 501 to 515 and 516 to 597b of this Appendix] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

(Oct. 17, 1940, ch. 888, title VI, §602, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2859.)

PRIOR PROVISIONS

A prior section 582, act Oct. 17, 1940, ch. 888, art. VI, §602, 54 Stat. 1191, related to revocation of interlocutory orders, prior to the general amendme

Act by Pub. L. 108–189. See section 583 of this

§583. Interlocutory orders

An interlocutory order issued by a court under this Act [sections 501 to 515 and 516 to 597b of this Appendix] may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

(Oct. 17, 1940, ch. 888, title VI, §603, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2860.)

PRIOR PROVISIONS

Prior sections 583 to 585 were omitted in the general amendment of this Act by Pub. L. 108–189.

Section 583, act Oct. 17, 1940, ch. 888, art. VI, §603, 54 Stat. 1191, related to separability.

Section 584, acts Oct. 17, 1940, ch. 888, art. VI, §604, 54 Stat. 1191; Pub. L. 102–12, §9(27), Mar. 18, 1991, 105 Stat. 41, related to termination date.

Section 585, act Oct. 17, 1940, ch. 888, art. VI, §605, 54 Stat. 1191, related to the inapplicability of the Soldiers' and Sailors' Relief Act of 1918 (section 101 et seq. of this Appendix), to military service performed after Oct. 17, 1940.

TITLE VII—FURTHER RELIEF

PRIOR PROVISIONS

A prior section 590, act Oct. 17, 1940, ch. 888, art. VII, §700, as added Oct. 6, 1942, ch. 581, §18, 56 Stat. 777, related to stay of enforcement of obligations, liabilities, and taxes, prior to the general amendment of this Act by Pub. L. 108–189. See section 591 of this Appendix.

§591. Anticipatory relief

(a) Application for relief

A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

(2) from a tax or assessment falling due before or during the servicemember's military service.

(b) Tax liability or assessment

In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) Stay of enforcement of real estate contracts

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

(i) during the servicemember's period of military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be—

(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

(ii) subject to payment of the balance of principal and accumulated interest due and

unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) Stay of enforcement of other contracts

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

(i) during the servicemember's military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be—

(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Affect [1] of stay on fine or penalty

When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

(Oct. 17, 1940, ch. 888, title VII, §701, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2860.)

PRIOR PROVISIONS

A prior section 591, act Oct. 17, 1940, ch. 888, art. VII, §701, as added Pub. L. 92–540, title V, §504(2), Oct. 24, 1972, 86 Stat. 1098; amended Pub. L. 102–12, §3, Mar. 18, 1991, 105 Stat. 34, related to power of attorney, prior to the general amendment of this Act by Pub. L. 108–189. See section 592 of this Appendix.

[1] *So in original. Probably should be "Effect".*

§592. Power of attorney

(a) Automatic extension

A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

(1) was duly executed by the servicemember—

(A) while in military service; or

(B) before entry into military service but after the servicemember—

(i) received a call or order to report for military service; or

(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

(3) expires by its terms after the servicemember entered a missing status.

(b) Limitation on power of attorney extension

A power of attorney executed by a servicemember may not be extended under subsection (a) if the

document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

(Oct. 17, 1940, ch. 888, title VII, §702, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2861.)

PRIOR PROVISIONS

A prior section 592, act Oct. 17, 1940, ch. 888, art. VII, §702, as added Pub. L. 102–12, §4, Mar. 18, 1991, 105 Stat. 34; amended Pub. L. 104–106, div. A, title XV, §1501(e)(3), Feb. 10, 1996, 110 Stat. 501, related to professional liability protection for certain persons ordered to active duty in armed forces, prior to the general amendment of this Act by Pub. L. 108–189. See section 593 of this Appendix.

§593. Professional liability protection

(a) Applicability

This section applies to a servicemember who—

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty—

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) Suspension of coverage

(1) Suspension

Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) Premiums for suspended contracts

A professional liability insurance carrier—

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) Nonliability of carrier during suspension

A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) Certain claims considered to arise before suspension

For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) Reinstatement of coverage

(1) Reinstatement required

Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) Time and premium for reinstatement

The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) Period of reinstated coverage

The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) Increase in premium

(1) Limitation on premium increases

An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) Exception

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) Continuation of coverage of unaffected persons

This section does not—

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) Stay of civil or administrative actions

(1) Stay of actions

A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) Date of commencement of action

Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have

emed to have been filed on the date on which

the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) Effect of suspension upon limitations period

In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) Death during period of suspension

If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) Definitions

For purposes of this section:

(1) Active duty

The term "active duty" has the meaning given that term in section 101(d)(1) of title 10, United States Code.

(2) Profession

The term "profession" includes occupation.

(3) Professional

The term "professional" includes occupational.

(Oct. 17, 1940, ch. 888, title VII, §703, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2862.)

PRIOR PROVISIONS

A prior section 593, act Oct. 17, 1940, ch. 888, art. VII, §703, as added Pub. L. 102–12, §5(b), Mar. 18, 1991, 105 Stat. 37, related to reinstatement of health coverage upon release from service, prior to the general amendment of this Act by Pub. L. 108–189. See section 594 of this Appendix.

§594. Health insurance reinstatement

(a) Reinstatement of health insurance

A servicemember who, by reason of military service as defined in section 703(a)(1) [section 593(a)(1) of this Appendix], is entitled to the rights and protections of this Act [sections 501 to 515 and 516 to 597b of this Appendix] shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

(1) was in effect on the day before such service commenced; and

(2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period

The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

(1) the condition arose before or during the period of such service;

(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

(3) in a case in which the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) Exceptions

Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) Time for applying for reinstatement

An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

(e) Limitation on premium increases

(1) Premium protection

The amount of the premium for health insurance coverage that was terminated by a servicemember and required to be reinstated under subsection (a) may not be increased, for the balance of the period for which coverage would have been continued had the coverage not been terminated, to an amount greater than the amount chargeable for such coverage before the termination.

(2) Increases of general applicability not precluded

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by the carrier of the health care insurance for the same health insurance coverage for persons similarly covered by such insurance during the period between the termination and the reinstatement.

(Oct. 17, 1940, ch. 888, title VII, §704, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2864; amended Pub. L. 109–233, title III, §302, June 15, 2006, 120 Stat. 406.)

PRIOR PROVISIONS

A prior section 594, act Oct. 17, 1940, ch. 888, art. VII, §704, as added Pub. L. 107–107, div. A, title XVI, §1603, Dec. 28, 2001, 115 Stat. 1276, related to guarantee of residency for military personnel, prior to the general amendment of this Act by Pub. L. 108–189. See section 595 of this Appendix.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–233, §302(b), substituted "in a case in which the" for "if the".
Subsec. (e). Pub. L. 109–233, §302(a), added subsec. (e).

§595. Guarantee of residency for military personnel and spouses of military personnel

(a) In general

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) [now 52 U.S.C. 30101]) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

(b) Spouses

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) [now 52 U.S.C. 30101]) or a State or local office, a person who is absent from a State because the person is accompanying the person's spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

(Oct. 17, 1940, ch. 888, title VII, §705, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2865; amended Pub. L. 111–97, §2(a), Nov. 11, 2009, 123 Stat. 3007.)

AMENDMENTS

2009—Pub. L. 111–97 inserted "and spouses of military personnel" after "military personnel" in section catchline, designated existing provisions as subsec.(a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–97, §2(c), Nov. 11, 2009, 123 Stat. 3007, provided that: "Subsection (b) of section 705 of such Act [Servicemembers Civil Relief Act] (50 U.S.C. App. 595), as added by subsection (a) of this section, shall apply with respect to absences from States described in such subsection (b) on or after the date of the enactment of this Act [Nov. 11, 2009], regardless of the date of the military or naval order concerned."

§596. Business or trade obligations

(a) Availability of non-business assets to satisfy obligations

If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) Relief to obligors

Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

(Oct. 17, 1940, ch. 888, title VII, §706, as added Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2865.)

TITLE VIII—CIVIL LIABILITY

§597. Enforcement by the Attorney General

(a) Civil action

The Attorney General may commence a civil action in any appropriate district court of the United States against any person who—

(1) engages in a pattern or practice of violating this Act [sections 501 to 515 and 516 to 597b of this Appendix]; or

(2) engages in a violation of this Act that raises an issue of significant public importance.

(b) Relief

In a civil action commenced under subsection (a), the court may—

(1) grant any appropriate equitable or declaratory relief with respect to the violation of this Act [sections 501 to 515 and 516 to 597b of this.

(2) award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and

(3) may, to vindicate the public interest, assess a civil penalty—

(A) in an amount not exceeding $55,000 for a first violation; and

(B) in an amount not exceeding $110,000 for any subsequent violation.

(c) Intervention

Upon timely application, a person aggrieved by a violation of this Act [sections 501 to 515 and 516 to 597b of this Appendix] with respect to which the civil action is commenced may intervene in such action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 [section 597a of this Appendix] with respect to that violation, along with costs and a reasonable attorney fee.

(Oct. 17, 1940, ch. 888, title VIII, §801, as added Pub. L. 111–275, title III, §303(a), Oct. 13, 2010, 124 Stat. 2877.)

§597a. Private right of action

(a) In general

Any person aggrieved by a violation of this Act [sections 501 to 515 and 516 to 597b of this Appendix] may in a civil action—

(1) obtain any appropriate equitable or declaratory relief with respect to the violation; and

(2) recover all other appropriate relief, including monetary damages.

(b) Costs and attorney fees

The court may award to a person aggrieved by a violation of this Act [sections 501 to 515 and 516 to 597b of this Appendix] who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee.

(Oct. 17, 1940, ch. 888, title VIII, §802, as added Pub. L. 111–275, title III, §303(a), Oct. 13, 2010, 124 Stat. 2877.)

§597b. Preservation of remedies

Nothing in section 801 or 802 [section 597 or 597a of this Appendix] shall be construed to preclude or limit any remedy otherwise available under other law, including consequential and punitive damages.

(Oct. 17, 1940, ch. 888, title VIII, §803, as added Pub. L. 111–275, title III, §303(a), Oct. 13, 2010, 124 Stat. 2877.)

VIRGINIA GENERAL DISTRICT COURT CIVIL FORMS

VARRANT IN DEBT (CIVIL CLAIM FOR MONEY)

Commonwealth of Virginia VA. CODE § 16.1-79

..... General District Court
CITY OR COUNTY

.....
STREET ADDRESS OF COURT

O ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).

O THE DEFENDANT(S): You are summoned to appear before this Court at the above address on

..... to answer the Plaintiff(s)' civil claim (see below)
RETURN DATE AND TIME

.....
DATE ISSUED

[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

LAIM: Plaintiff(s) claim that Defendant(s) owe Plaintiff(s) a debt in the sum of

..... net of any credits, with interest at .....% from date of ..... until paid,

..... costs and $ ..... attorney's fees with the basis of this claim being

] n Account [ ] Contract [ ] Note [ ] Other (EXPLAIN)

.....

OMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] cannot be demanded

.....
DATE

[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S EMPLOYEE/AGENT

ASE DISPOSITION

IDGMENT against [ ] named Defendant(s) [ ] .....

r $ ..... net of any credits, with interest at ..... % from date

..... until paid, $..... costs and $..... attorney's fees

OMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED

] JUDGMENT FOR [ ] NAMED DEFENDANT(S) [ ] .....

] NON-SUIT [ ] DISMISSED .....

fendant(s) Present? [ ] YES .....
[ ] NO

.....
DATE

JUDGE

FORM DC-412 (PAGE ONE OF TWO) 07/04 PDF

CASE NO.

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

.....

.....

.....

V.

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

.....

.....

.....

WARRANT IN DEBT

* * *

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.

[ ] To dispute this claim, you must appear on the return date to try this case.

[ ] To dispute this claim, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars ....
ORDERED DUE

Grounds of Defense ....
ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)

.....

.....

ATTORNEY FOR DEFENDANT(S)

.....

.....

HEARING DATE AND TIME

JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION.

.....
DATE

.....
CLERK

DISABILITY ACCOMMODATIONS for loss of hearing, vision, mobility, etc., contact the court ahead of time.

RETURNS: Each defendant was served according to law, as indicated below, unless not found.

NAME ....

....

ADDRESS ....

....

[ ] PERSONAL SERVICE Tel. No. ....

Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

____

____

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on Secretary of the Commonwealth

[ ] NOT FOUND

____
SERVING OFFICER

.... for ______________________________
DATE

- 150 -

NAME ....

....

ADDRESS ....

....

[ ] PERSONAL SERVICE Tel. No. ....

Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

____

____

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on Secretary of the Commonwealth

[ ] NOT FOUND

____
SERVING OFFICER

.... for ______________________________
DATE

NAME ....

....

ADDRESS ....

....

[ ] PERSONAL SERVICE Tel. No. ....

Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

____

____

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on Secretary of the Commonwealth

[ ] NOT FOUND

____
SERVING OFFICER

.... for ______________________________
DATE

OBJECTION TO VENUE:

To the Defendant(s): If you believe that Plaintiff(s) should have filed this suit in a different city or county, you may file a written request to have the case moved for trial to the general district court of that city or county. To do so, you must do the following:

1. Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the right corner, (c) Plaintiff(s)' name(s) and Defendant(s)' name(s), (d) the phrase "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.

2. File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to plaintiff.

3. If you mail this request to the court, you will be notified of the judge's decision.

I certify that I mailed a copy of this document to the defendants named therein at the address shown therein on

.... ______________________________
DATE

[ ] Plaintiff
[ ] Plaintiff's Atty.
[ ] Plaintiff's Agent

Fi. Fa. issued on ....

Interrogatories issued on: ....

Garnishment issued on ....

....

CERTIFICATE OF MAILING POSTED SERVICE

Commonwealth of Virginia VA. CODE § 8.01-296(2)(b)

Case No. .....

Return date or
Continued to .....

[ ] General District Court
[ ] Juvenile and Domestic Relations District Court

..... CITY OR COUNTY

..... PLAINTIFF/PETITIONER

In re/v.

..... DEFENDANT(S)/RESPONDENT(S)

Check the box for the method which you used for mailing in compliance with Virginia Code § 8.01-296(2)(b).

[ ] 1. If mailed after civil warrant is issued (signed) by clerk/magistrate or the summons with petition attached is issued by the juvenile and domestic relations district court clerk:

I certify that I mailed a copy of the process to the defendant(s) named above on

..... day of ....., ... at the address given on the original process.

_____
[ ] ATTORNEY [ ] PLAINTIFF [ ] AGENT

The following procedure would comply with this method:

A. The clerk of the court will furnish you with a copy of the process.**

B. You must mail a copy of the process not less than ten days before trial when judgment by default may be entered.

C. A certificate, to be prepared by the plaintiff, that a copy of this process has been mailed must be mailed in the Clerk's Office on or before the return date or the date to which the case has been continued.

D. The certificate must set forth that you have mailed a copy of the process not less than ten days before judgment by default may be entered.

** If you furnish us a self-addressed envelope with proper postage addressed to you, we will mail the service copies which you must mail to each defendant (regular mail).

[ ] 2. If mailed before civil warrant is issued by clerk/magistrate:

I certify that I mailed a copy of the pleading which contains the date, time and place of the return prior to the filing the pleading in the general district court to the defendant(s) named above on

..... day of ....., ... at the address given on the original process.

_____
[ ] ATTORNEY [ ] PLAINTIFF [ ] AGENT

AFFIDAVIT – DEFAULT JUDGMENT
SERVICEMEMBERS CIVIL RELIEF ACT

Commonwealth of Virginia VA. CODE § 8.01-15.2

Case No. .....

.....
RETURN DATE AND TIME

[ ] Circuit Court [ ] General District Court
[ ] Juvenile and Domestic Relations District Court

.....
CITY OR COUNTY

..... v./*In re:* .....

I, ...
PRINT NAME
, the undersigned affiant, states the following under oath:

[ ] The defendant/respondent [ ] is in military service. [ ] is not in military service.

The following facts support the statement above:

.....

[ ] The affiant is unable to determine whether or not the defendant/respondent is in military service.
Pursuant to 50 U.S.C. app. § 521, if the court is unable to determine whether the defendant/respondent is in military service based upon the affiant's statement, the court, before entering judgment, may require the plaintiff/petitioner to file a bond in an amount approved by the court.

.....
DATE

_____
AFFIANT'S SIGNATURE

The above-named affiant personally appeared this day before the undersigned, and upon duly being sworn, made oath that the facts stated in this affidavit are true to the best of his or her knowledge, information and belief.

.....
DATE

_____
[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE [ ] JUDGE [ ] INTAKE OFFICER

FOR NOTARY PUBLIC'S USE ONLY:

State of ..... [ ] City [ ] County of .....

Acknowledged, subscribed and sworn to before me this ..... day of ....., 20 .....

.....
NOTARY REGISTRATION NUMBER

_____
NOTARY PUBLIC
(My commission expires: .....)

NOTICE REGARDING APPOINTMENT OF COUNSEL TO REPRESENT ABSENT SERVICEMEMBER:
Where appointment of counsel is required pursuant to 50 U.S.C. app. § 521 or § 522, the court may assess attorneys' fees and costs against any party, as the court deems appropriate, and shall direct in its order which of the parties to the case shall pay such fees and costs, except the Commonwealth unless it is the party that obtains the judgment.

FOR COURT USE ONLY:

[ ] **ORDER OF APPOINTMENT OF COUNSEL**

I find that appointment of counsel is required pursuant to 50 U.S.C. app. § 521 or § 522 and therefore, I appoint the lawyer indicated below to represent the absent servicemember named as defendant/respondent above.

NAME, ADDRESS OF COURT APPOINTED LAWYER .....

.....
NEXT HEARING DATE AND TIME

.....

.....
DATE

.....

_____
JUDGE

[ ] **STAY OF PROCEEDINGS**

I find that a stay of proceedings is required pursuant to 50 U.S.C. app. § 521 and, therefore, such a stay, for a minimum period of 90 days, is ordered until .....
NEXT HEARING DATE AND TIME

.....
DATE

_____

SUMMONS FOR UNLAWFUL DETAINER
CIVIL CLAIM FOR EVICTION)

VA. CODE § 8.01-126
Commonwealth of Virginia

..... General District Court
CITY OR COUNTY

.....
STREET ADDRESS OF COURT

O ANY AUTHORIZED OFFICER: Summon the Defendant(s) as provided below;
O THE DEFENDANT(S): You are commanded to appear before this Court on

..... to answer this civil claim.
RETURN DATE AND TIME

.....
DATE ISSUED

[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

LAIM AND AFFIDAVIT: That Defendant(s) unlawfully detains and withholds from Plaintiff(s):

.....
ADDRESS/DESCRIPTION OF DETAINED PROPERTY

d that the Defendant should be removed from possession based on the following:
] unpaid rent [ ].....
d further that rent is due and owing and damages have been incurred as follows:

..... rent due for ..... and $ ..... late fee
RENT PERIOD

d $ ..... damages for ..... with interest .....
RATE(S) AND BEGINNING DATE(S)

d $ costs ..... and $ ..... civil recovery and $ ..... attorney's fees.
[Plaintiff requests judgment for all amounts due as of the date of the hearing.
This summons is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant
§ 55-248.2 *et seq.* of the Code of Virginia.
ed notices have been given.

[ ] PLAINTIFF(S) [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT

bscribed and sworn to before me this ..... day of ....., 20 .....
commission expires: .....
ARY REGISTRATION NO .....

[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE [ ] NOTARY PUBLIC
[ ] City [ ] County of .....

SE DISPOSITION
JUDGMENT that Plaintiff(s) recover against { [ ] ..... [ ] named DEFENDANT(S).
possession of the premises described above pursuant to § 8.01-128.
A hearing shall be held on ..... to establish final rent and damages.
DATE AND TIME
Immediate writ of possession authorized pursuant to Virginia Code
[ ] § 8.01-129 based upon a judgment of default for [ ] a trustee's deed following foreclosure
[ ] the nonpayment of rent [ ] immediate non-remediable termination.
[ ] § 55-243(C) or § 55-248.34:1(D).
FENDANT(S) PRESENT? [ ] YES [ ] NO

.....
DATE

.....
JUDGE

Rent, in the sum of $ ..... and $ ..... late fee
$ ..... damages with interest ..... and
RATE(S) AND BEGINNING DATE(S)
..... costs and $ ..... civil recovery and $ ..... attorney's fees.
MESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED
UDGMENT FOR [ ] NAMED DEFENDANT(S) [ ] .....
ION-SUIT [ ] DISMISSED DEFENDANT(S) PRESENT? [ ] YES [ ] NO

.....
DATE

.....
JUDGE

4 DC-421 FRONT 07/14

CASE NO.

.....
PLAINTIFF(S) NAME(S) (LAST, FIRST, MIDDLE)

.....

.....

.....
TELEPHONE NUMBER

V.

.....
DEFENDANT(S) NAME(S) (LAST, FIRST, MIDDLE)

.....

.....

.....
TELEPHONE NUMBER

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location and your right to prevent this unlawful detainer action through payment of amounts owed.

[ ] To dispute this case, you must appear on the return date to try this case

[ ] To dispute this case, you must appear on the return date for the judge to set another date for trial.

If you fail to appear and a default judgment is entered against you, a writ of possession may be issued immediately for possession of the premises.

Bill of Particulars ordered .....
DUE DATE

Grounds of Defense ordered .....
DUE DATE

ATTORNEY FOR PLAINTIFF(S)

.....

.....

.....
TELEPHONE NUMBER

ATTORNEY FOR DEFENDANT(S)

.....

.....

.....
TELEPHONE NUMBER

DISABILITY ACCOMMODATIONS for loss of vision, hearing, mobility, etc. Contact the court ahead of time.

HEARING DATE AND TIME

_____

_____

_____

_____

_____

_____

_____

[ ] Redemption tender presented; continued to:

.....
HEARING DATE AND TIME

[ ] Defendant must pay:

$ .....
RENT OWED
into the court to be held in escrow by

.....
DATE
and any rents coming due prior to the next hearing date must also be paid into the court.

_____
JUDGE'S INITIALS

MONEY JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION

.....
DATE

.....
CLERK

o the Defendant(s):

(1) The preferred location for an Unlawful Detainer action is the city or county where the property is located. If the plaintiff has filed this case in a city or county other than where the property you rent is located, you may object to the location. The court may transfer the case to the preferred location, if the court agrees with you. The court may award costs and attorney's fees to you if the court agrees with your objection. To object to the location of the suit, you must do the following:

- Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the left column under the words "TO THE DEFENDANT(S)," (c) Plaintiff(s)' name(s) and your name(s), (d) "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.
- File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to the plaintiff.
- If you mail your written request to the court, the clerk will notify you of the judge's decision.

(2) If you pay the landlord or his attorney or pay into court all (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, and (v) costs of the proceeding as provided by law, this unlawful detainer action will be dismissed pursuant to Virginia Code § 55-243 or 55-248.34:1. You may exercise this right only once every 12 months that you continue to live in the same place, regardless of the term of the rental agreement or any renewal term.

(3) You may tell your landlord that you want another person to receive a copy of this summons, and the landlord shall send a copy to that person. However, the person you identify will not, by receiving a copy of the summons, become a party to the case or be able to challenge the landlord's actions on your behalf. Virginia Code § 55-248.9:1

I certify that I mailed a copy of this document to the defendants named therein at the address show therein on

..... [ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT
DATE

Fi. Fa. issued on .....

Interrogatories issued on .....

Garnishment issued on .....

RETURNS: Each defendant was served according to law, as indicated below, unless not found.

Name .....

Address .....

.....

[ ] Personal Service Tel. No. .....

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on the Secretary of the Commonwealth

[ ] Not found _____ SERVING OFFICER

..... for _____
DATE

Name .....

Address .....

.....

[ ] Personal Service Tel. No. .....

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on the Secretary of the Commonwealth

[ ] Not found _____ SERVING OFFICER

..... for _____
DATE

NOTICE OF HEARING TO ESTABLISH FINAL RENT AND DAMAGES

Commonwealth of Virginia VA. CODE § 8.01-128

Case No. .....

[ ] Circuit Court
..... [ ] General District Court
CITY OR COUNTY

.....
COURT ADDRESS

This notice is filed in connection with Case No. .....

..... v. .....
PLAINTIFF DEFENDANT

.....

.....

The plaintiff hereby gives notice to the defendant/respondent that, because of a hearing on

..... upon a Summons for Unlawful Detainer for .....
DATE

.....
ADDRESS/DESCRIPTION OF DETAINED PROPERTY

at which the above named court granted a final, appealable judgment for possession of the property unlawfully entered or detained, a writ of possession for the premises, and upon the continuance of the case, **another hearing will be held on**

..... **at** ..... **to establish final rent and damages in the following amount(s):**
DATE TIME

$ ..... rent due for .....
RENT PERIOD OF TIME

and $ ..... late fee and $ ..... damages for .....,

with interest ..... and $ ..... costs and $ ..... civil recovery
RATE(S) AND BEGINNING DATE(S)

and $ ..... attorney's fees.

[ ] See attached sheet for itemized damages.

Total rent and damages claimed $ .....

The plaintiff further notifies the defendant/respondent that the plaintiff seeks judgment in the amount(s) specified above.

The undersigned hereby certifies to mailing this notice to the defendant at the defendant's last known address of

.....
ADDRESS

on ..... (must be at least 15 days prior to the continuance date specified above).
DATE OF MAILING

A copy of this notice has been filed with the court.

.....
DATE

_____
[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY

.....
PRINT NAME

.....
ADDRESS/TEL. NUMBER OF SIGNATOR

UGGESTION FOR SUMMONS IN GARNISHMENT

ommonwealth of Virginia Va. Code § 8.01-511

..... General District Court
CITY OR COUNTY

ORIGINAL JUDGMENT

DATE OF JUDGMENT	DATE EXECUTION ORDERED
CITY OR COUNTY WHERE JUDGMENT ENTERED	

STATEMENT

..... Judgment Principal
..... Credits (see reverse)
..... Interest at _____ % to return date
..... Judgment Costs
..... Attorney's Fee
..... Garnishment Costs

..... 0.00 Total Balance Due
e garnishee shall rely on this amount.

MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

[ ] Support (if not specified, then 50%)
[ ] 50% [ ] 55% [ ] 60% [ ] 65% [ ] State Taxes, 100%
If none of the above are checked, then § 34-29(a) applies (a plain-language interpretation of this section is on the reverse of the SUMMONS).

: the Clerk to summon the Suggested Garnishee to answer this suggestion.
garnishment against (check only one) [ ] the judgment debtor's wages, salary or other compensation. [ ] some other debt due or
., of the judgment debtor, specifically .....
ave reason to believe that there is a liability on the suggested garnishee because of the execution on the "ORIGINAL JUDGMENT" cribed above. I certify that:

[ ] (1) The summons is based upon a judgment upon which a prior summons has been issued but not fully satisfied; or
[ ] (2) No summons has been issued upon this judgment creditor's suggestion against the same judgment debtor within a period of eighteen months, other than a summons which was based upon a judgment upon which a prior summons has been issued but not fully satisfied; or
(3) The summons is based upon a judgment granted against a debtor upon a debt due or made for necessary food, rent, or shelter, public utilities including telephone service, drugs, or medical care supplied the debtor by the judgment creditor or to one of his or her lawful dependents, and that it was not for luxuries or nonessentials; or
(4) The summons is based upon a judgment for a debt due the judgment creditor to refinance a lawful loan made by an authorized lending institution; or
(5) The summons is based upon a judgment on an obligation incurred as an endorser or comaker upon a lawful note; or
(6) The summons is based upon a judgment for a debt or debts reaffirmed after bankruptcy.

reby certify that the last known address of the defendant is as shown at right.

[ ] I represent that I have made a diligent, good faith effort to secure the social security number of the judgment debtor and have been unable to do so.

..... _____
DATE SUBMITTED [ ] JUDGMENT CREDITOR [ ] AGENT [ ] ATTORNEY

NING: Any judgment creditor who knowingly gives false information in a Suggestion for Garnishment shall be guilty of a class 1 misdemeanor.

DC-458 (FRONT) 07/12

CASE NO. RETURN DATE

SUGGESTION FOR SUMMONS IN GARNISHMENT

..... JUDGMENT CREDITOR'S NAME
..... STREET ADDRESS
..... CITY STATE ZIP
..... TELEPHONE NUMBER
..... JUDGMENT CREDITOR'S ATTORNEY'S NAME
..... STREET ADDRESS
..... CITY STATE ZIP
..... TELEPHONE NUMBER
..... JUDGMENT DEBTOR'S NAME
..... STREET ADDRESS
..... CITY STATE ZIP
..... SOCIAL SECURITY NUMBER TELEPHONE NUMBER
..... SUGGESTED GARNISHEE'S NAME (SEE NOTE BELOW)
..... STREET ADDRESS
..... CITY STATE ZIP
..... TELEPHONE NUMBER

If garnishee is judgment debtor's employer, please furnish employer's name, and state whether it is a corporation, or one or more persons trading under a fictitious or trade name.

INSTRUCTIONS TO JUDGMENT

Show how these credits were computed on this side of this form or on an attached sheet of paper.
You should show:

— Date and amount of each payment.

— How interest is computed.

— How payments are credited.

ARNISHMENT SUMMONS

mmonwealth of Virginia Va. Code §§ 8.01-511, 8.01-512.3

..... General District Court
COURT NAME

.....
COURT ADDRESS AND TELEPHONE NUMBER

ANY AUTHORIZED OFFICER: You are hereby commanded to serve this summons on the judgment tor and the garnishee.

THE GARNISHEE: You are hereby commanded to (1) file a written answer with this court, or (2) deliver ment to this court, or (3) appear before this court on the hearing date and time shown on this summons to ver the Suggestion for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ eri facias, there is a liability as shown in the statement upon the garnishee.

As garnishee, you shall withhold from the judgment debtor any sums of money to which the judgment debtor may be entitled from you during the period between the date of service of this summons on you and the for your appearance in court, subject to the following limitations: (1) The maximum amount which may be ished is the "TOTAL BALANCE DUE" as shown on this summons. (2) You shall not be liable to the ment creditor for any property not specified in this garnishment summons. (3) If the sums of money being ished are earnings of the judgment debtor, then the provision of "MAXIMUM PORTION OF POSABLE EARNINGS SUBJECT TO GARNISHMENT" shall apply.

a garnishment summons is served on an employer having one thousand or more employees, then money to h the judgment debtor is or may be entitled from his or her employer shall be considered those wages, ies, commission or other earnings which, following service on the garnishee-employer, are determined and e to the judgment debtor under the garnishee-employer's normal payroll procedure with a reasonable ance for making a timely return by mail to this court.

158

..... ISSUANCE OF SUMMONS

_____ CLERK

AND TIME OF DELIVERY OF WRIT OF FIERI S TO SHERIFF IF DIFFERENT FROM DATE OF NCE OF THIS SUMMONS

TO GARNISHEE: On check or written answer, include return date, case number and judgment debtor's name. MAKE CHECK PAYABLE TO JUDGMENT CREDITOR AND DELIVER TO THE COURT.

T OF FIERI FACIAS TO ANY AUTHORIZED OFFICER: You are commanded to execute this writ and ke from the intangible personal estate of the judgment debtor(s) the principal, interest, costs and attorney's less credits, shown in the Garnishment Summons. You are further commanded to make your return to the 's office according to law.

stead Exemption Waived? [ ] yes [ ] no [ ] cannot be demanded

..... DATE OF ISSUANCE OF WRIT

_____ CLERK

T DISPOSITION

DER that

ie garnishee pay to the judgment creditor through the court $ ..... net of any credits.

e case be DISMISSED.

.....

..... DATE ENTERED

_____ JUDGE

DC-451 (FRONT) 1/07

CASE NO.

HEARING DATE & TIME

_____

_____

_____

_____

..... JUDGMENT CREDITOR'S NAME

..... STREET ADDRESS

..... CITY, STATE, ZIP

..... TELEPHONE NUMBER

..... JUDGMENT CREDITOR'S ATTORNEY'S NAME

..... ADDRESS

..... TELEPHONE NUMBER

..... JUDGMENT DEBTOR'S NAME (SERVE)

..... STREET ADDRESS

..... CITY, STATE, ZIP

..... SOCIAL SECURITY NUMBER TELEPHONE NUMBER

..... GARNISHEE'S NAME

..... STREET ADDRESS

..... CITY, STATE, ZIP

..... DATE OF JUDGMENT ..... TELEPHONE NUMBER

STATEMENT

.....	Judgment Principal
.....	Credits
.....	Interest
.....	Judgment Costs
.....	Attorney's Fees
.....	Garnishment Costs

..... $0.00 TOTAL BALANCE DUE
The garnishee shall rely on this amount.

GARNISHMENT SUMMONS

This is a garnishment against (check only one)
[ ] the judgment debtor's wages, salary or other compensation.
[ ] some other debt due or property of the judgment debtor, specifically, ...
.....
.....

MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

[ ] Support
[ ] 50% [ ] 55%
[ ] 60% [ ] 65%
(if not specified, then 50%)

[ ] state taxes, 100%

If none of the above are checked, then § 34-29(a) applies (a plain-language interpretation of this section is on the reverse of this GARNISHMENT SUMMONS).

$.....
received by

.....
JUDGMENT CREDITOR
[ ] Judgment debtor present

.....
DATE

The following statement is not the law but is an interpretation of the law which is intended to assist those who must respond to this garnishment. You may rely on this only for general guidance because the law itself is the final word. (Read the law, § 34-29 of the Code of Virginia, for a full explanation. A copy of § 34-29 is available at the Clerk's office. If you do not understand the law, call a lawyer for help.)

An employer may take as much as 25 percent of an employee's disposable earnings to satisfy this garnishment. But if any employee makes the minimum wage or less for his week's earnings, the employee will ordinarily get to keep 40 times the minimum hourly wage.

But an employer may withhold a different amount of money from that above if:

(1) The employee must pay child support or spousal support and was ordered to do so by a court procedure or other legal procedure. No more than 65 percent of an employee's earnings may be withheld for support;
(2) Money is withheld by order of a bankruptcy court; or
(3) Money is withheld for a tax debt.

"Disposable earnings" means the money an employee makes "after taxes" and after other amounts required by law to be withheld are satisfied. Earnings can be salary, hourly wages, commissions, bonuses, payments to an independent contractor, or otherwise, whether paid directly to the employee or not.

If an employee tries to transfer, assign or in any way give his earnings to another person to avoid the garnishment, it will not be legal; earnings are still earnings.

Financial institutions that receive an employee's paycheck by direct deposit do not have to determine what part of a person's earnings can be garnished.

CAME TO HAND

..... DATE AND TIME

- 159 -

_____ SHERIFF

NOTE:
Return of Writ of Fieri Facias to be used if no effects found otherwise, use appropriate sections of DC-467, WRIT OF FIERI FACIAS.

[ ] NO EFFECTS FOUND

..... DATE

_____ SHERIFF

_____ DEPUTY SHERIFF

RETURNS: The judgment debtor was served, according to law, as indicated below, unless not found, with a copy of both this summons and the § 8.01-512.4 form.

JUDGMENT DEBTOR .....

ADDRESS .....

.....

[ ] PERSONAL SERVICE

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on Secretary of the Commonwealth.

[ ] Not found

_____ SERVING OFFICER

..... for .....
DATE OF SERVICE

RETURNS: The following garnishee was served, according to law, as indicated below, unless not found.

GARNISHEE .....

ADDRESS .....

.....

[ ] PERSONAL SERVICE | [ ] FEDERAL SERVICE*

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Served on registered agent of the corporation. List name and title:

.....

.....

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on the Secretary of the Commonwealth

[ ] Served on the Clerk of the State Corporation Commission, pursuant to § 8.01-513.

[ ] Copy mailed to judgment debtor after serving the garnishee on date of service unless a different date of mailing is shown.

..... DATE OF MAILING

[ ] Not found

_____ SERVING OFFICER

..... for .....
DATE OF SERVICE

* Federal garnishment statutes, 5 U.S.C. § 5520a(c)(1) and 42 U.S.C. § 659 provide that the garnishee, when a federal agency, may be served either personally or by certified or registered mail, return receipt requested.

NOTICE TO JUDGMENT DEBTOR
HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT AND LIEN

The attached Summons in Garnishment or Notice of Lien has been issued on request of a creditor who holds a judgment against you. The Summons may cause your property or wages to be held or taken to pay the judgment.

The law provides that certain property and wages cannot be taken in garnishment. Such property is said to be exempted. A summary of some of the major exemptions is set forth in the request for hearing form. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption, you should (i) fill out the claim for exemption form and (ii) deliver or mail the form to the clerk's office of this court.

You have a right to a hearing within seven business days from the date you file your claim with the court. If the creditor is asking that your wages be withheld, the method of computing the amount of wages which are exempt from garnishment by law is indicated on the Summons in Garnishment attached. You do not need to file a claim for exemption to receive this exemption, but if you believe the wrong amount is being withheld, you may file a claim for exemption.

On the day of the hearing, you should come to court ready to explain why your property is exempted, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights.

If you do not claim an exemption and do not otherwise contest the garnishment, you are not required to appear in court on the return date on the Garnishment Summons.

It may be helpful for you to seek the advice of an attorney in this matter.

THE REQUEST FOR HEARING FORM IS PRINTED ON THE REVERSE OF THIS FORM.

REQUEST FOR HEARING – GARNISHMENT/LIEN EXEMPTION CLAIM

Commonwealth of Virginia VA. CODE § 8.01-512.4

Case No. .....

.....
COURT NAME

..... v. .....
JUDGMENT CREDITOR JUDGMENT DEBTOR

and .....
GARNISHEE

I claim that the exemption(s) from garnishment or lien which are checked below apply in this case:

Major Exemptions Under Federal and State Law

_____ 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).

_____ 2. Veterans' benefits (38 U.S.C. § 5301).

_____ 3. Federal civil service retirement benefits (5 U.S.C. § 8346).

_____ 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).

_____ 5. Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 916).

_____ 6. Black Lung benefits.

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

_____ 7. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C. § 11109).

_____ 8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may not be applicable in child support cases (§ 60.2-608, Code of Virginia).

_____ 9. Amounts in excess of portions of wages subject to garnishment (§ 34-29, Code of Virginia).

_____ 10. Public assistance payments (§ 63.2-506, Code of Virginia).

_____ 11. Homestead exemption of $5,000 in cash, or $10,000 if the householder is 65 years of age or older. (§ 34-4, Code of Virginia). This exemption may not be claimed in certain cases, such as payment of child or spousal support (§ 34-5, Code of Virginia).

_____ 12. Property of disabled veterans – additional $10,000 cash (§ 34-4.1, Code of Virginia).

_____ 13. Worker's Compensation benefits (§ 65.2-531, Code of Virginia).

_____ 14. Growing crops (§ 8.01-489, Code of Virginia).

_____ 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).

_____ 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).

_____ 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).

_____ 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).

_____ 19. Proceeds from funeral trusts (§ 54.1-2823, Code of Virginia).

_____ 20. Certain retirement benefits (§ 34-34, Code of Virginia).

_____ 21. Child support payments (§ 20-108.1, Code of Virginia).

_____ 22. Support for dependent children (§ 34-4.2, Code of Virginia). To claim this exemption, an affidavit that complies with the requirements of subsection B of § 34-4.2 and two items of proof showing entitlement to this exemption must be attached to this exemption form. (The affidavit, form DC-449, AFFIDAVIT CONCERNING DEPENDENT CHILDREN AND HOUSEHOLD INCOME, is available at www.courts.state.va.us/forms/district/civil.html or the clerk's office.)

_____ 23. Other (describe exemption): $ .....

I request a court hearing to decide the validity of my claim. Notice of hearing should be given to me at:

....
ADDRESS TELEPHONE NUMBER

The statements made in this request are true to the best of my knowledge and belief.

REQUEST FOR WRIT OF POSSESSION IN UNLAWFUL DETAINER PROCEEDINGS

Commonwealth of Virginia Va. Code § 8.01-471

[ ] General District Court
[ ] Circuit Court

CITY OR COUNTY

TO THE COURT:

I/we, the plaintiff(s) in this proceeding, request that this court issue a writ of possession against the defendants with regard to the following premises:

This request is made upon a judgment for possession dated: .....

[ ] As this case falls under the Virginia Residential Landlord and Tenant Act (§ 55.28.2 *et seq*), I/we represent that, following the entry of the judgment for possession, the landlord has not accepted rent payments without reservation, as described in Virginia Code § 55-248.34:1.

DATE

[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT

CASE NO.

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

V.

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

WRIT OF POSSESSION

Va. Code §§ 8.01-470, 8.01-472

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth to cause the Plaintiff(s) to have possession of the following premises from the defendant(s):

You are further commanded to make a return before me within 30 days of this date as to the day and manner of executing this writ.

DATE

[ ] CLERK [ ] JUDGE

CAME TO HAND

DATE AND TIME

, SHERIFF

EXECUTED by taking into possession the within-named premises and delivering possession of it to the plaintiff(s).

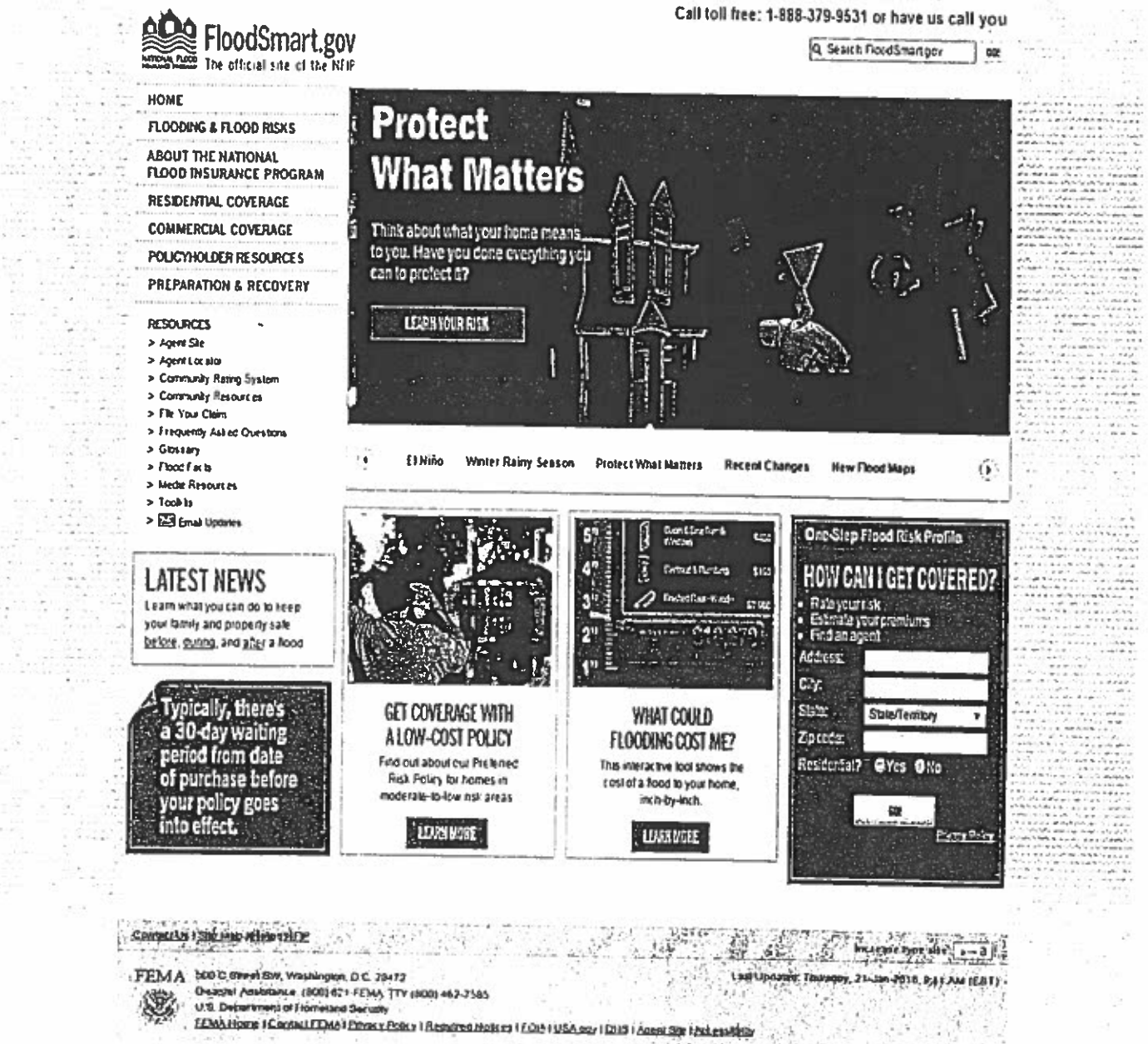
DATE

, SHERIFF

by

DEPUTY SHERIFF

FLOOD UPDATE


FloodSmart.gov
The official site of the NFIP
Call toll free: 1-888-379-9531 or have us call you
Search FloodSmart.gov
HOME
FLOODING & FLOOD RISKS
ABOUT THE NATIONAL FLOOD INSURANCE PROGRAM
RESIDENTIAL COVERAGE
COMMERCIAL COVERAGE
POLICYHOLDER RESOURCES
PREPARATION & RECOVERY
RESOURCES
> Agent Site
> Agent Locator
> Community Rating System
> Community Resources
> File Your Claim
> Frequently Asked Questions
> Glossary
> Flood Facts
> Media Resources
> Toolkits
> Email Updates
Protect What Matters
Think about what your home means to you. Have you done everything you can to protect it?
LEARN YOUR RISK
El Niño
Winter Rainy Season
Protect What Matters
Recent Changes
New Flood Maps
LATEST NEWS
Learn what you can do to keep your family and property safe before, during, and after a flood
Typically, there's a 30-day waiting period from date of purchase before your policy goes into effect.
GET COVERAGE WITH A LOW-COST POLICY
Find out about our Preferred Risk Policy for homes in moderate-to-low risk areas
LEARN MORE
WHAT COULD FLOODING COST ME?
This interactive tool shows the cost of a flood to your home, inch-by-inch.
LEARN MORE
One-Step Flood Risk Profile
HOW CAN I GET COVERED?
Rate your risk
Estimate your premiums
Find an agent
Address:
City:
State:
State/Territory
Zipcode:
Residential? Yes No
Go
Please Select
FEMA
500 C Street SW, Washington, D.C. 20472
Disaster Assistance (800) 621-FEMA, TTY (800) 462-7585
U.S. Department of Homeland Security
FEMA Home | Contact FEMA | Privacy Policy | Required Notices | FOIA | USA.gov | DHS | Agent Site | Accessibility

FloodSmart.gov
The official site of the NFIP

Call toll free: 1-888-379-9531 or have us call you

Search FloodSmart.gov

HOME

FLOODING & FLOOD RISKS
- What Causes Flooding
- Know Your Flood Risk
- Defining Flood Risks
- Understanding Flood Maps
- Undergoing a Map Change
- Flood Map Update Schedule
- FloodSmart Video Library
- Flood Risk Scenarios
- The Cost of Flooding
- The Levee Simulator

ABOUT THE NATIONAL FLOOD INSURANCE PROGRAM

RESIDENTIAL COVERAGE

COMMERCIAL COVERAGE

POLICYHOLDER RESOURCES

PREPARATION & RECOVERY

RESOURCES
- Agent Site
- Agent List Jobs
- Community Rating System
- Community Resources
- File Your Claim
- Frequently Asked Questions
- Glossary
- Flood Facts
- Media Resources
- Tools
- Email Updates

Nearly 20% of flood insurance claims come from moderate-to-low risk areas.

What Is A Flood?

Anywhere it rains, it can flood. A flood is a general and temporary condition where two or more acres of normally dry land or two or more properties are inundated by water or mudflow. Many conditions can result in a flood: hurricanes, overtopped rivers, outlined or clogged drainage systems and rapid accumulation of rainfall.

Just because you haven't experienced a flood in the past, doesn't mean you won't in the future. Flood risk isn't just based on history, it's also based on a number of factors: rainfall, river flow and tidal surge data, topography, flood control measures, and changes due to building and development.

Flood-hazard maps have been created to show different degrees of risk for your community, which help determine the cost of flood insurance. The lower the degree of risk, the lower the flood insurance premium.

One Stop Flood Risk Profile

HOW CAN I GET COVERED?
- Rate your risk
- Estimate your premiums
- Find an agent

Address:
City:
State: State/Territory
Zip code:
Residential? Yes No

Rate my Risk

SEE WHAT FLOOD WATERS TOOK FROM BECKY

Watch the video

WHAT CAUSES FLOODING

Fast melting snow, severe storms and heavy rainfall are some of the causes of flooding.

LEARN MORE

DEFINING FLOOD RISKS

Flooding can happen anywhere, but certain areas are especially prone to serious flooding.

LEARN MORE

UNDERSTANDING FLOOD MAPS

FEMA conducts a Flood Insurance Study and uses the

UNDERGOING A MAP CHANGE

Flood risk can and does change over time. FEMA frequently

FLOOD MAP UPDATE SCHEDULE

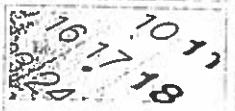
Enter your ZIP code and find out which communities in your county have maps scheduled to be updated.

LEARN MORE

FLOODSMART VIDEO LIBRARY

Watch our videos, from debunking misconceptions about flooding to our Home Personal Comparison.

LEARN MORE



FLOOD RISK SCENARIOS

There are many ways flooding can occur and we'll

LEARN MORE

LEVEE SIMULATOR

The FloodSmart.gov Levee Simulator shows different ways a levee can

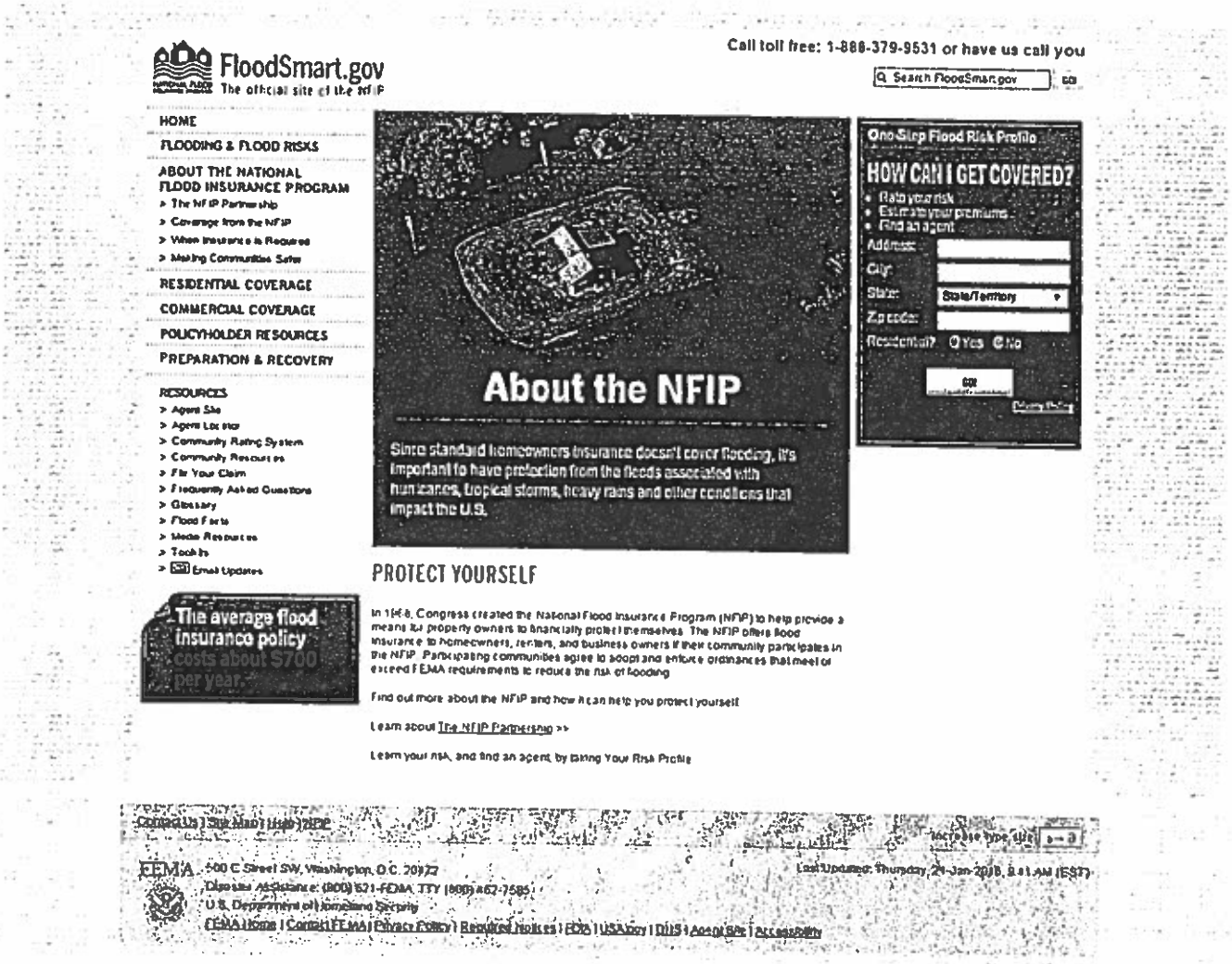
LEARN MORE

Contact Us | Site Map | How to | NFIP

FEMA 500 C Street SW, Washington, D.C. 20472
Customer Assistance: 1-800-621-FEMA (3362) TTY (800) 462-7585
U.S. Department of Homeland Security

Last Updated: Thursday, 21-Jan-2016, 9:41 AM (EST)

FEMA Home | Contact FEMA | Privacy Policy | Required Notices | FOIA | USA.gov | DHS | Accessibility


FloodSmart.gov
The official site of the NFIP
Call toll free: 1-888-379-9531 or have us call you
Search FloodSmart.gov
go
HOME
FLOODING & FLOOD RISKS
ABOUT THE NATIONAL FLOOD INSURANCE PROGRAM
> The NFIP Partnership
> Coverage from the NFIP
> When Insurance is Required
> Making Communities Safer
RESIDENTIAL COVERAGE
COMMERCIAL COVERAGE
POLICYHOLDER RESOURCES
PREPARATION & RECOVERY
RESOURCES
> Agent Site
> Agent Locator
> Community Rating System
> Community Resources
> File Your Claim
> Frequently Asked Questions
> Glossary
> Flood Facts
> Media Resources
> Toolkits
> Email Updates
The average flood insurance policy costs about $700 per year.
About the NFIP
Since standard homeowners insurance doesn't cover flooding, it's important to have protection from the floods associated with hurricanes, tropical storms, heavy rains and other conditions that impact the U.S.
One-Stop Flood Risk Profile
HOW CAN I GET COVERED?
Rate your risk
Estimate your premiums
Find an agent
Address:
City:
State:
State/Territory
Zip code:
Residential? Yes No
go
PROTECT YOURSELF
In 1968, Congress created the National Flood Insurance Program (NFIP) to help provide a means for property owners to financially protect themselves. The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP. Participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding.
Find out more about the NFIP and how it can help you protect yourself.
Learn about The NFIP Partnership >>
Learn your risk, and find an agent, by taking Your Risk Profile
Contact Us | Site Map | Help | RSS
Increase Type Size
FEMA 500 C Street SW, Washington, D.C. 20472
Disaster Assistance: (800) 621-FEMA, TTY (800) 462-7585
U.S. Department of Homeland Security
Last Updated: Thursday, 24-Jan-2013, 8:01 AM (EST)
FEMA Home | Contact FEMA | Privacy Policy | Required Notices | FOIA | USA.gov | DHS | Accessibility

LEAD BASED PAINT UPDATE

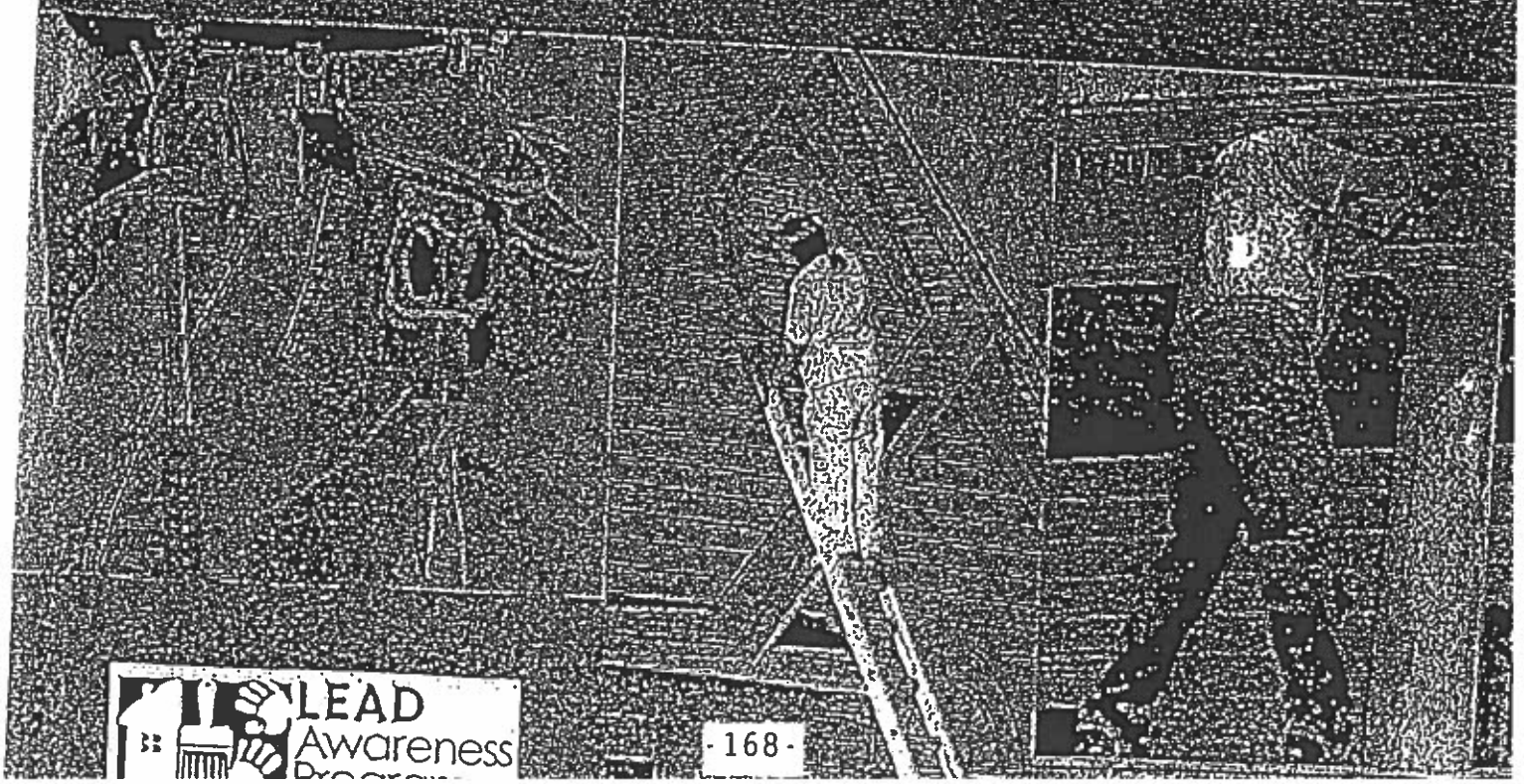
United States
Environmental
Protection Agency
Office of Pollution Prevention and Toxics

EPA-740-F-08-003
December 2008

Small Entity Compliance Guide to Renovate Right

EPA's Lead-Based Paint Renovation, Repair, and Painting Program

A handbook for contract
property managers and
maintenance personnel
working in homes, child
care facilities and schoo
built before 1978



LEAD
Awareness

Who Should Read this Handbook?

- Anyone who owns or manages housing or child-occupied facilities built before 1978.
- Contractors who perform activities that disturb painted surfaces in homes and child-occupied facilities built before 1978 (including certain repairs and maintenance, and painting preparation activities).

About this Handbook

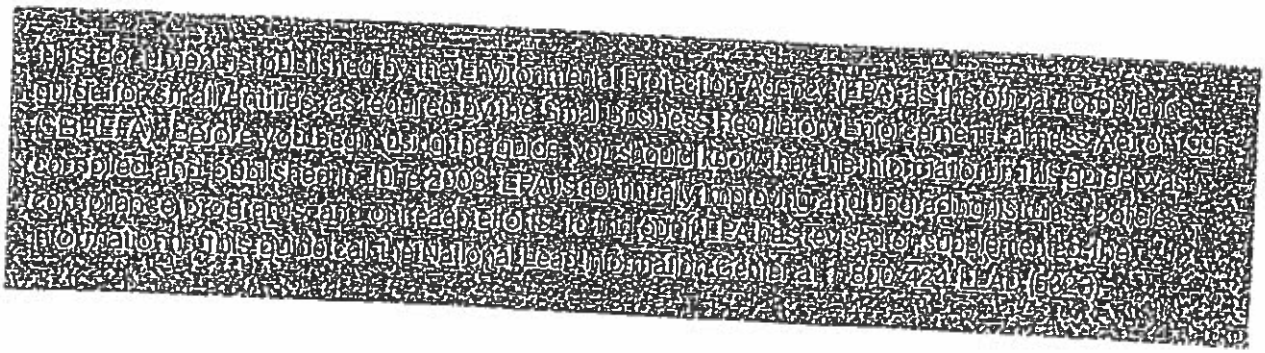
This handbook summarizes requirements of EPA's Lead-Based Paint Renovation, Repair and Painting Program Rule, aimed at protecting against lead-based paint hazards associated with renovation, repair and painting activities. The rule requires workers to be trained to use lead-safe work practices and requires renovation firms to be EPA-certified; these requirements will become effective April 22, 2010.

To ensure compliance, you should also read the complete rule on which the program is based. While EPA has summarized the provisions of the rule in this guide, the legal requirements that apply to renovation work are governed by EPA's 2008 Lead Rule. A copy of the rule is available on EPA's website at www.epa.gov/lead/pubs/renovation.

A companion pamphlet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* (EPA-740-F-08-002), has been prepared in conjunction with the rule for distribution to persons affected by work that disturbs lead-based paint. (See page 17 for information on how to get copies of the rule, the *Renovate Right* pamphlet, and other related materials).

Other state or local requirements that are different from or more stringent than the federal requirements may apply in your state. For example, federal law allows EPA to authorize states to administer their own program in lieu of the federal lead program. Even in states without an authorized lead program, a state may promulgate its own rules that may be different or go beyond the federal requirements. For more information on the rules that apply in your state, please contact the National Lead Information Center at 1-800-424-LEAD (5323).

Your feedback is important. Please review this guide and contact the National Lead Information Center at 1-800-424-LEAD (5323) with any comments regarding its usefulness and readability, and improvements you think are needed.



What Is the Lead-Based Paint Renovation, Repair and Painting Program (RRP)?

- The Lead-Based Paint Renovation, Repair and Painting Program is a federal regulatory program affecting contractors, property managers, and others who disturb painted surfaces.
- It applies to residential houses, apartments, and child-occupied facilities such as schools and day-care centers built before 1978.
- It includes pre-renovation education requirements as well as training, certification, and work practice requirements.
  - Pre-renovation education requirements are effective now:
    - Contractors, property managers, and others who perform renovations for compensation in residential houses, apartments, and child-occupied facilities built before 1978 are required to distribute a lead pamphlet before starting renovation work.
  - Training, certification, and work practice requirements become effective April 22, 2010:
    - Firms are required to be certified, their employees must be trained in use of lead-safe work practices, and lead-safe work practices that minimize occupants' exposure to lead hazards must be followed.
- Renovation is broadly defined as any activity that disturbs painted surfaces and includes most repair, remodeling, and maintenance activities, including window replacement.
- The program includes requirements implementing both Section 402(c) and 406(b) of the Toxic Substances Control Act (TSCA). (www.epa.gov/lead/pubs/titleten.html)
- EPA's lead regulations can be found at 40 CFR Part 745, Subpart E.

How Can this Handbook Help Me?

- Understanding the lead program's requirements can help you protect your customers from the hazards of lead and can, therefore, mean more business for you.
- This handbook presents simple steps to follow to comply with the EPA's lead program. It also lists ways these steps can be easily incorporated into your work.
- Distributing the lead pamphlet and incorporating required work practices into your job site will help protect your customers and occupants from the hazards of lead-based paint.

Who Must Follow the 2008 Lead Rule's Requirements?

In general, anyone who is paid to perform work that disturbs paint in housing and child-occupied facilities built before 1978, this may include, but is not limited to:

- Residential rental property owners/managers
- General contractors
- Special trade contractors, including
  - Painters
  - Plumbers
  - Carpenters
  - Electricians

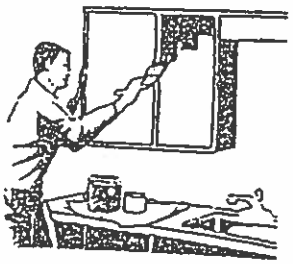
What Activities Are Subject to the Lead Renovation, Repair and Painting Program?

In general, any activity that disturbs paint in pre-1978 housing and child-occupied facilities, including:

- Remodeling and repair/maintenance
- Electrical work
- Plumbing
- Painting
- Carpentry
- Window replacement

What Housing or Activities Are Excluded and Not Subject to the Rule?

- Housing built in 1978 or later.
- Housing for elderly or disabled persons, unless children under 6 reside or are expected to reside there.
- Zero-bedroom dwellings (studio apartments, dormitories, etc.).
- Housing or components declared lead-free by a certified inspector or risk assessor.
- Minor repair and maintenance activities that disturb 6 square feet or less of paint per room inside, or 20 square feet or less on the exterior of a home or building.
- Note: minor repair and maintenance activities do not include window replacement and projects involving demolition or prohibited practices.



What Does the Program Require Me To Do?

Pre-renovation education requirements - Effective now.

- In housing, you must:
  - Distribute EPA's lead pamphlet to the owner and occupants before renovation starts.
- In a child-occupied facility, you must:
  - Distribute the lead pamphlet to the owner of the building or an adult representative of the child-occupied facility before the renovation starts.
- For work in common areas of multi-family housing or child-occupied facilities, you must:
  - Distribute renovation notices to tenants or parents/guardians of the children attending the child-occupied facility. Or you must post informational signs about the renovation or repair job.
- Informational signs must:
  - Be posted where they will be seen;
  - Describe the nature, locations, and dates of the renovation; and
  - Be accompanied by the lead pamphlet or by information on how parents and guardians can get a free copy (see page 31 for information on obtaining copies).
- Obtain confirmation of receipt of the lead pamphlet (see page 23) from the owner, adult representative, or occupants (as applicable), or a certificate of mailing from the post office.
- Retain records for three years.
- *Note:* Pre-renovation education requirements do not apply to emergency renovations. Emergency renovations include interim controls performed in response to a resident child with an elevated blood-lead level.

Training, Certification, and Work Practice Requirements– Effective after April 22, 2010.

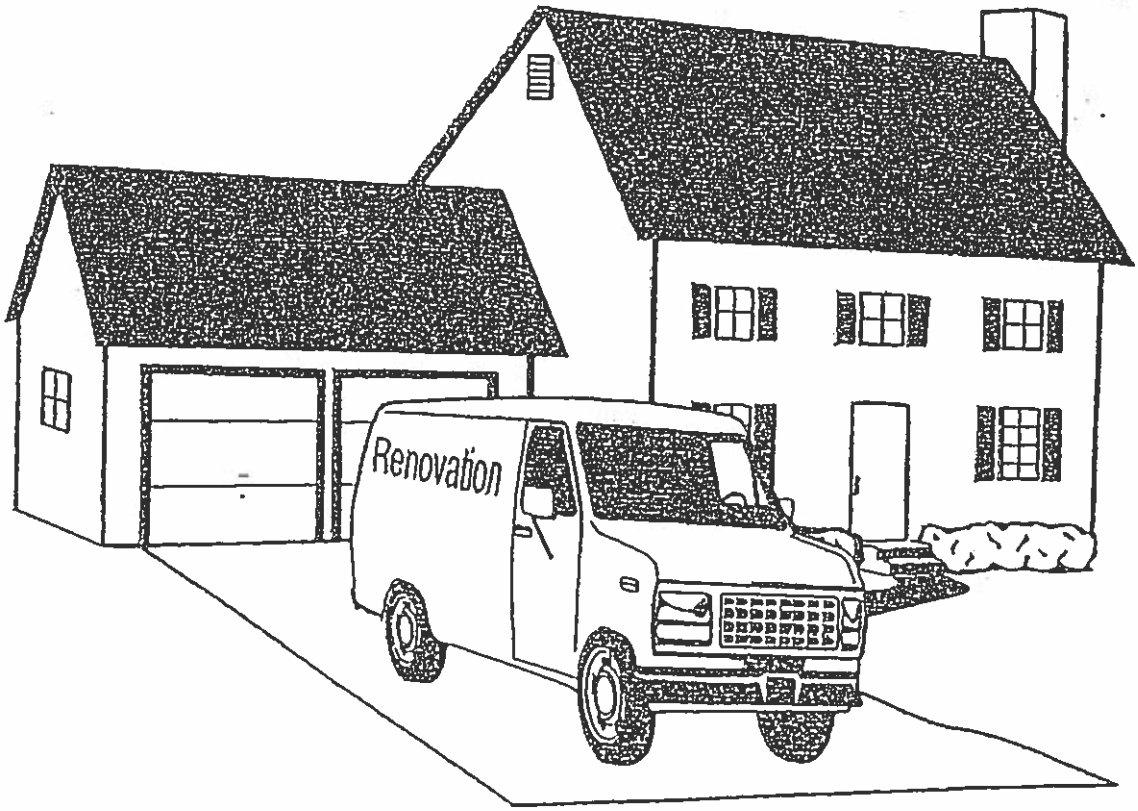
- Firms must be certified.
- Renovators must be trained.
- Lead-safe work practices must be followed. Examples of these practices include:
  - Work-area containment to prevent dust and debris from leaving the work area.
  - Prohibition of certain work practices like open-flame burning and the use of power tools without HEPA exhaust control.
  - Thorough clean up followed by a verification procedure to minimize exposure to lead-based paint hazards.
- The training, certification, and work practice requirements do not apply where the firm obtained a signed statement from the owner that all of the following are met:
  - The renovation will occur in the owner's residence;
  - No child under age 6 resides there;
  - No woman who is pregnant resides there;
  - The housing is not a child-occupied facility; and
  - The owner acknowledges that the renovation firm will not be required to use the work practices contained in the rule.

When Do These Requirements Become Fully Applicable to Me?

- April 2009:
  - Training providers may begin applying for accreditation.
  - Once training providers are accredited, they may offer training courses that will allow renovators to become certified.
- October 2009 - Renovation firms may begin applying to EPA for certification.
- April 2010 - Program fully effective. Work practices must be followed.

How Will a Firm Become Certified?

Beginning in October 2009, firms may apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees. To obtain a copy of the "Application for Firms" contact the NLIC at 1-800-424-LEAD (5323) or visit www.epa.gov/lead/pubs/renovation.htm.



What Are the Responsibilities of a Certified Firm?

Firms performing renovations must ensure that:

1. All individuals performing activities that disturb painted surfaces on behalf of the firm are either certified renovators or have been trained by a certified renovator.
2. A certified renovator is assigned to each renovation and performs all of the certified renovator responsibilities.
3. All renovations performed by the firm are performed in accordance with the work practice standards of the Lead-Based Paint Renovation, Repair, and Painting Program (see the flowchart on page 9 for details about the work practice standards).
4. Pre-renovation education requirements of the Lead-Based Paint Renovation, Repair, and Painting Program are performed.
5. The program's recordkeeping requirements are met.

How Will a Renovator Become Certified?

To become a certified renovator an individual must successfully complete an eight-hour initial renovator training course offered by an accredited training provider (training providers are accredited by EPA, or by an authorized state or tribal program). The course completion certificate serves as proof of certification. Training providers can apply for accreditation for renovator and dust sampling technician training beginning in April 2009. Once accredited, trainers can begin to provide certification training.

Are There Streamlined Requirements for Contractors with Previous Lead Training?

Yes. Individuals who have successfully completed an accredited lead abatement worker or supervisor course, or individuals who have successfully completed an EPA, Department of Housing and Urban Development (HUD), or EPA/HUD model renovation training course, need only take a four-hour refresher renovator training course instead of the eight-hour initial renovator training course to become certified.

What Are the Responsibilities of a Certified Renovator?

Certified renovators are responsible for ensuring overall compliance with the Lead-Based Paint Renovation, Repair, and Painting Program's requirements for lead-safe work practices at renovations they are assigned. A certified renovator (see the flowchart on page 9 for details about the work practice standards):

1. Must use a test kit acceptable to EPA, when requested by the party contracting for renovation services, to determine whether components to be affected by the renovation contain lead-based paint (EPA will announce which test kits are acceptable prior to April 2010. Please check our Web site at www.epa.gov/lead).
2. Must provide on-the-job training to workers on the work practices they will be using in performing their assigned tasks.
3. Must be physically present at the work site when warning signs are posted, while the work-area containment is being established, and while the work-area cleaning is performed.

4. Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.
5. Must be available, either on-site or by telephone, at all times renovations are being conducted.
6. Must perform project cleaning verification.
7. Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.
8. Must prepare required records.

How Long Will Firm and Renovator Certifications Last?

To maintain their certification, renovators and firms must be re-certified by EPA every five years. A firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees. Renovators must successfully complete a refresher training course provided by an accredited training provider.

What Are the Recordkeeping Requirements?

- All documents must be retained for three years following the completion of a renovation.
- Records that must be retained include:
  - Reports certifying that lead-based paint is not present.
  - Records relating to the distribution of the lead pamphlet.
  - Any signed and dated statements received from owner-occupants documenting that the requirements do not apply (i.e., there is no child under age 6 or no pregnant woman who resides at the home, and it is not a child-occupied facility).
  - Documentation of compliance with the requirements of the Lead-Based Paint Renovation, Repair, and Painting Program (EPA has prepared a sample form that is available at www.epa.gov/lead/pubs/samplechecklist.pdf).

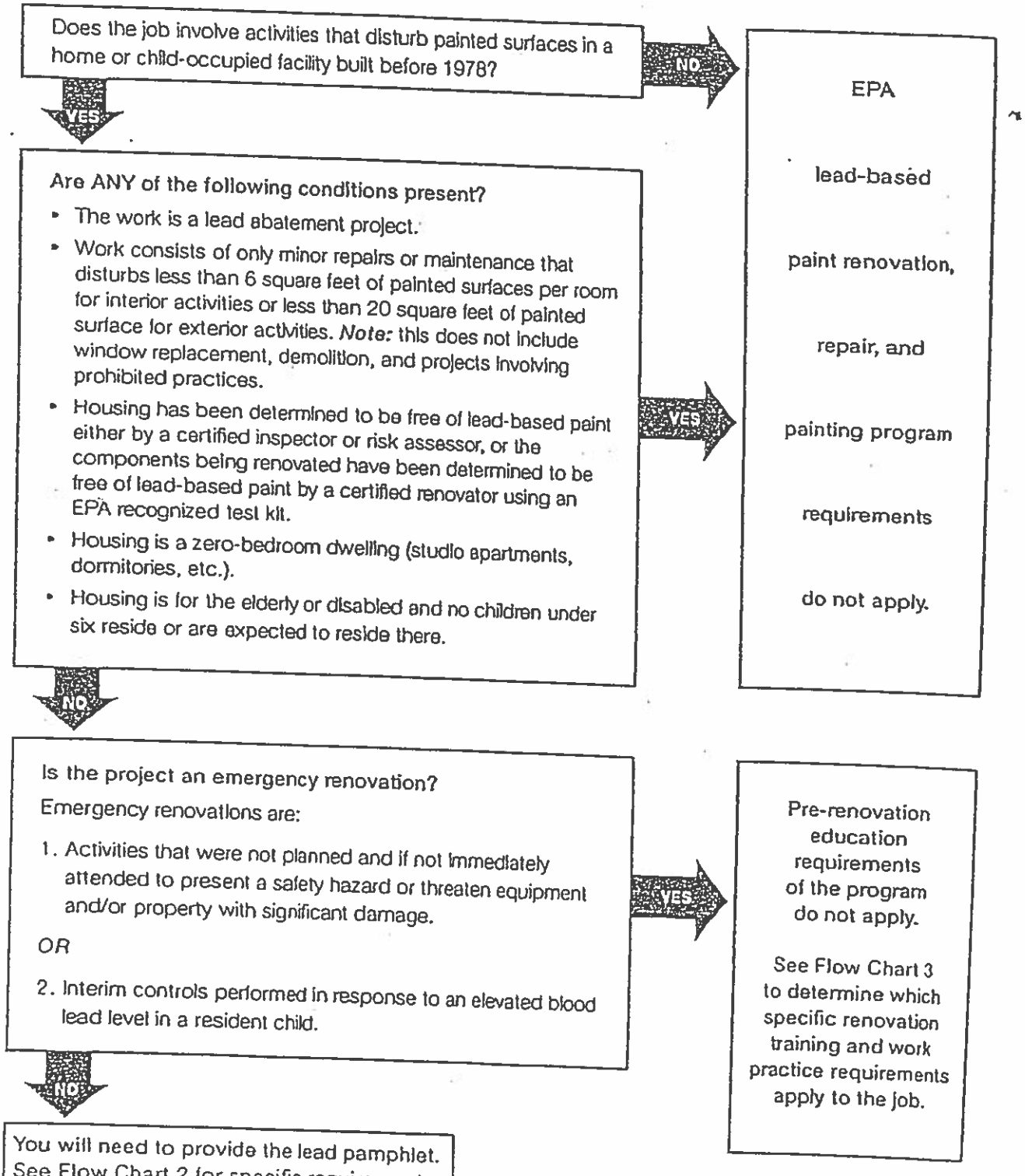
What Are the Required Work Practices?

The following pages will help determine your project's subject to the Lead-Based Paint Renovation, Repair and Painting Program's requirements and how to use the specific requirements for your particular project. The flowcharts and other information included in this guide are not intended to be a replacement for full training.

EPA's Lead Program Rule At-A-Glance

Do the Requirements Apply to the Renovation?

If you will be getting paid to do work that disturbs painted surfaces in a pre-1978 home, apartment building, or child-occupied facility, answer the questions below to determine if the EPA lead program requires you to distribute the lead pamphlet and/or if you will need to comply with training, certification, and work practice requirements when conducting the work.



How Do I Comply with the Pre-Renovation Education Requirements?

Requirements to distribute pre-renovation educational materials vary based on the location of the renovation. Select the location below that best describes the location of your project, and follow the applicable procedure on the right.

Renovations in Owner-Occupied Dwelling Units

Deliver lead pamphlet to owner before renovation begins and obtain confirmation of receipt.
OR
Mail lead pamphlet to owner 7 days before renovation begins and document with certificate of mailing.

Renovations in Tenant-Occupied Dwelling Units

1. Provide lead pamphlet to owner using either procedure described in the box at the top of this page.
2. Provide lead pamphlet to tenant by either method below:
   (a) Deliver pamphlet to dwelling unit before renovation begins and document delivery with either a confirmation of receipt of lead pamphlet or a self-certification of delivery.

OR

   (b) Mail lead pamphlet to tenant at least 7 days prior to renovation and document with a certificate of mailing.

Renovations in Common Areas of Multi-Family Housing Units

1. Provide owner with lead pamphlet using either procedure described in the box at the top of this page.
2. Notify tenants and make pamphlet available, or post signs describing the renovation. The signs must include the pamphlet or information on how to review a copy.
3. Maintain written documentation describing notification procedures.
4. Provide supplemental renovation notice if changes occur in location, timing, or scope of renovation occurring.

Renovations in Child-Occupied Facilities

1. Provide the owner of the building with the lead pamphlet using either:
   (a) The procedure described in the box at the top of this page.

OR

   (b) If the child-occupied facility is not the building owner, provide the lead pamphlet by either method below:
   (i) Obtain a written acknowledgment that an adult representative received the pamphlet; or certify in writing that a pamphlet was delivered.

OR

   (ii) Obtain a certificate of mailing at least 7 days before the renovation.

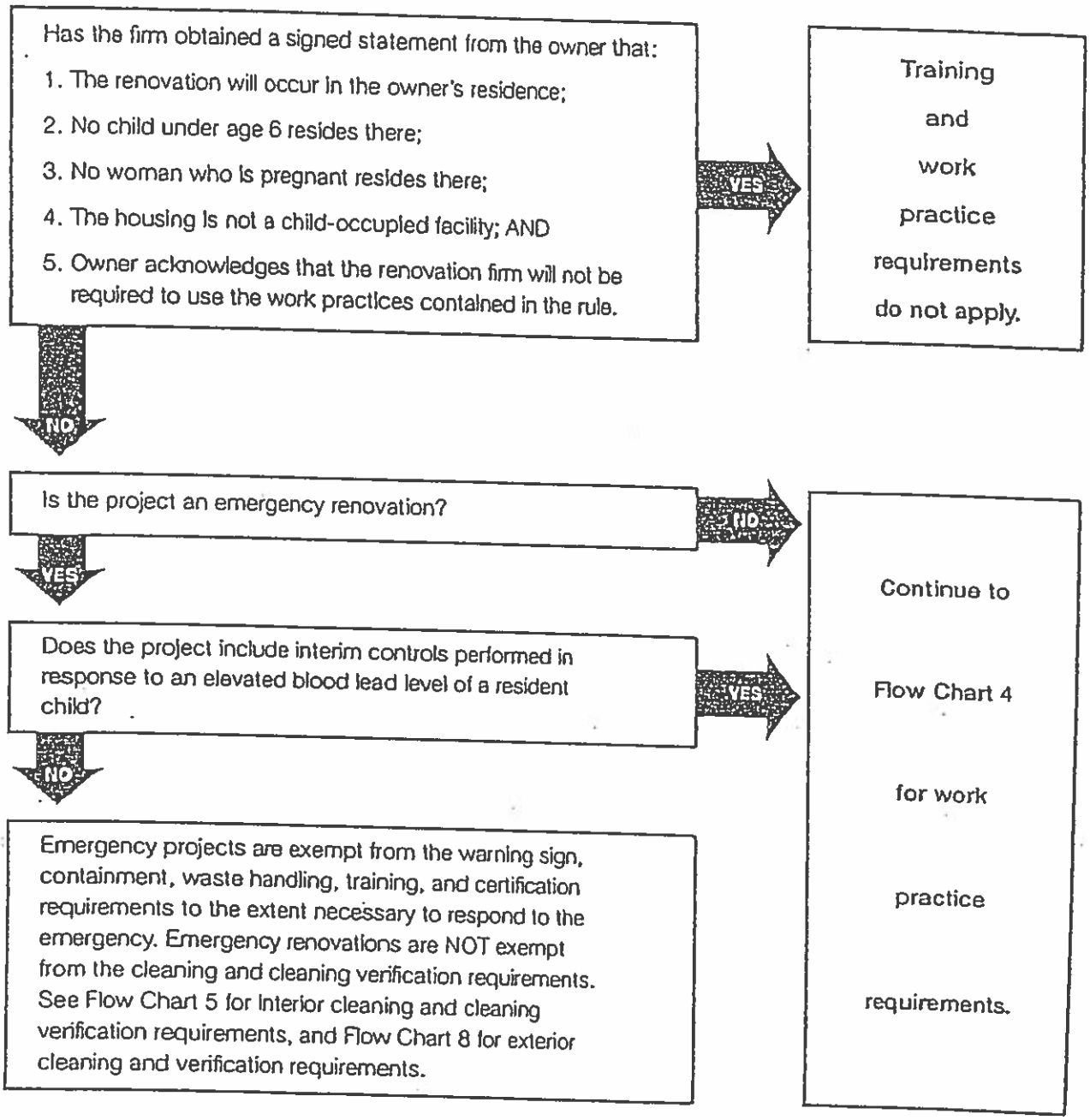
2. Provide the parents or guardians of children using the child-occupied facility with information by either of these methods:
   (a) Mail or hand-deliver the lead pamphlet and renovation information to each parent or guardian.

OR

   (b) Post signs describing the renovation. The signs must include the pamphlet or information on how to review a copy.

See Flow Chart 3 for information about specific training and work practice requirements for the job.

Do the Renovation Training and Work Practices Apply?



Work Practice Requirements

General

(A) Renovations must be performed by certified firms using certified renovators.

(B) Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs should be in the language of the occupants.

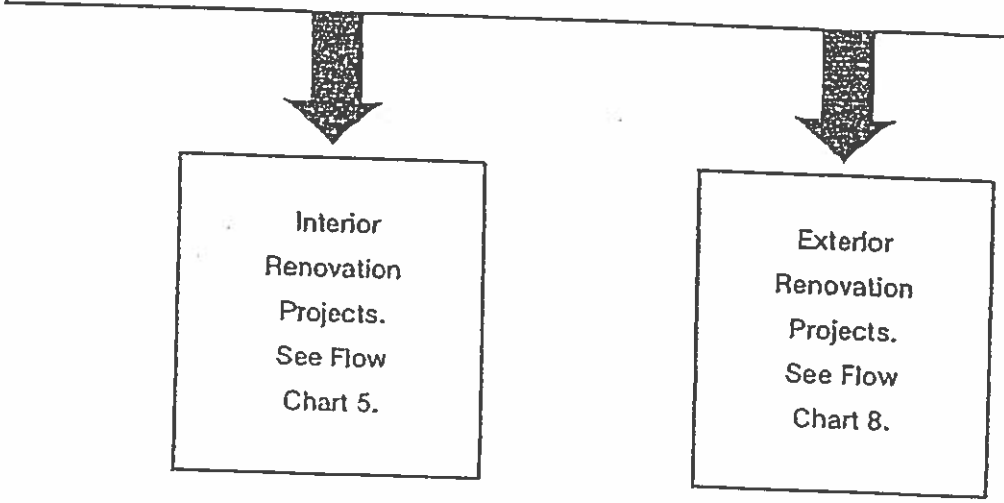
(C) Prior to the renovation, the firm must contain the work area so that no dust or debris leaves the work area while the renovation is being performed.

(D) Work practices listed below are prohibited during a renovation:

1. Open-flame burning or torching of lead-based paint;
2. Use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and
3. Operating a heat gun on lead-based paint at temperatures of 1100 degrees Fahrenheit or higher.

(E) Waste from renovations:

1. Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.
2. At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored to prevent access to and the release of dust and debris.
3. Waste transported from renovation activities must be contained to prevent release of dust and debris.



Work Practice Requirements Specific to Interior Renovations

The firm must:

(A) Remove all objects from the work area or cover them with plastic sheeting with all seams and edges sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting.

(D) Cover the floor surface with taped-down plastic sheeting in the work area a minimum of six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

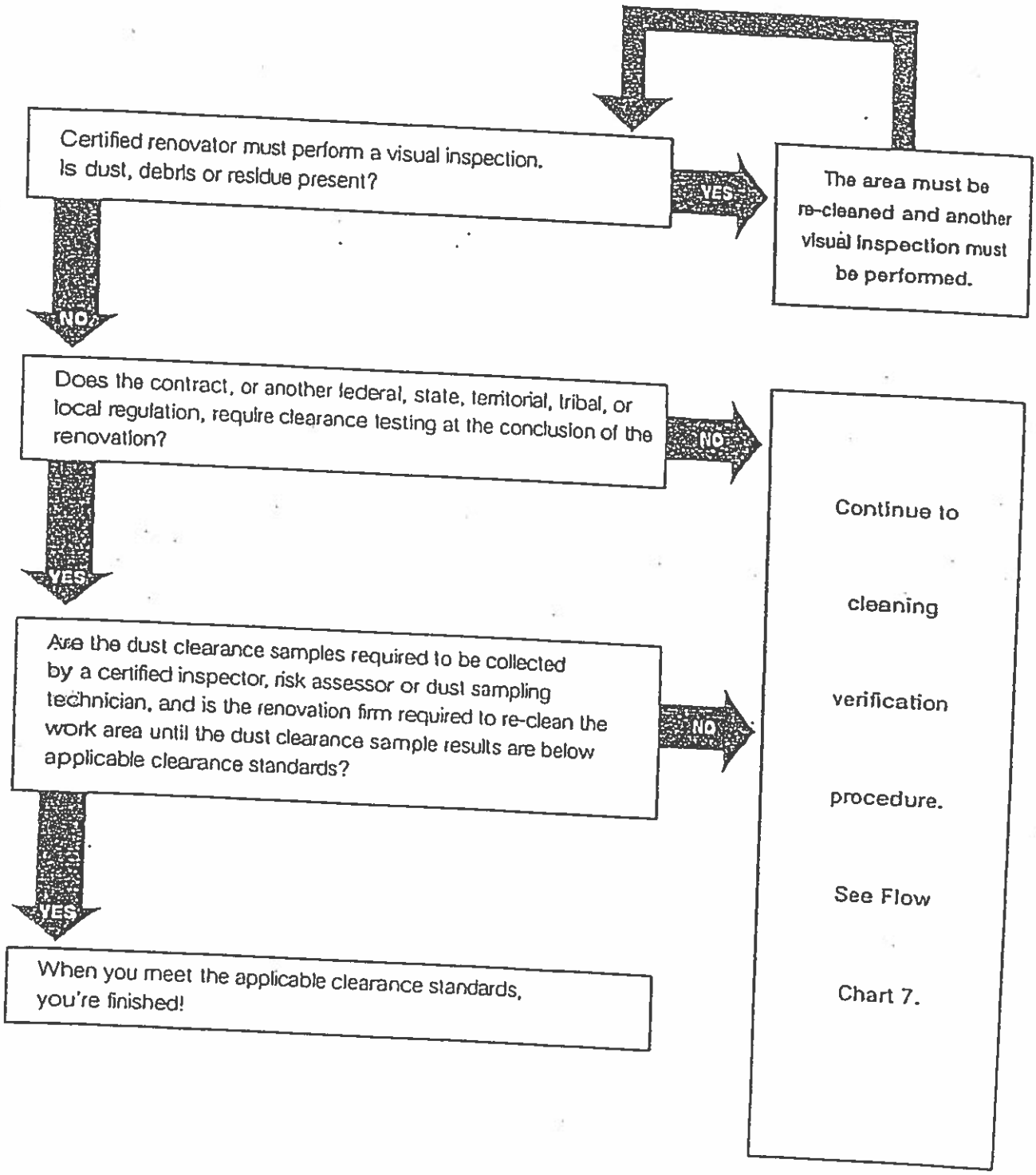
(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris when leaving the work area.

(F) After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains. The firm must:

1. Collect all paint chips and debris, and seal it in a heavy-duty bag.
2. Remove and dispose of protective sheeting as waste.
3. Clean all objects and surfaces in the work area and within two feet of the work area in the following manner:
   a. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.
   b. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum.
   c. Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly using a mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system.

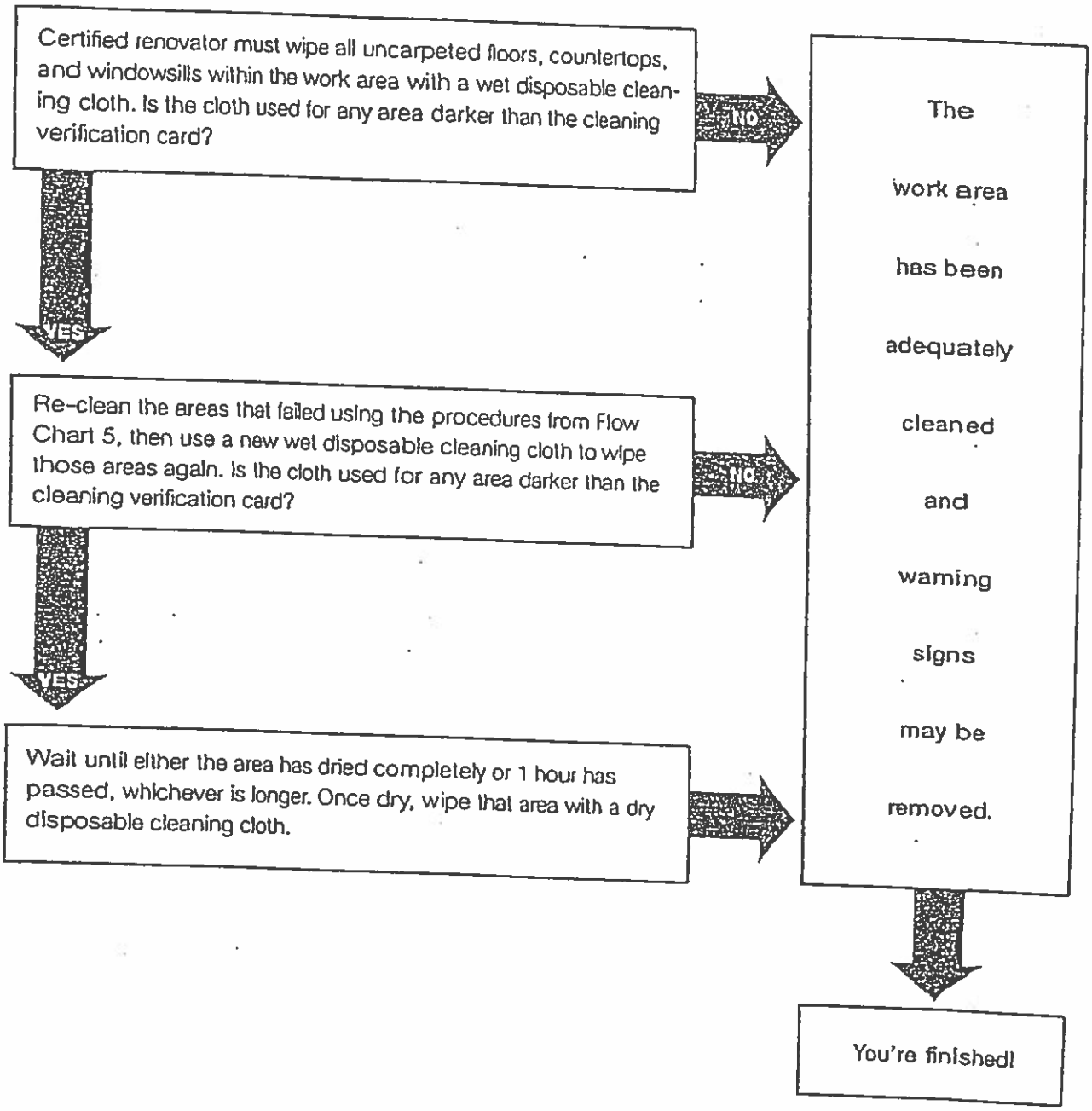
Cleaning verification is required to ensure the work area is adequately cleaned and ready for re-occupancy. See Flow Chart 6 for instructions on performing cleaning verification for interior projects.

Interior Cleaning Verification: Visual Inspection and Optional Clearance Testing



Interior Cleaning Verification: Floors, Countertops, and Window Sills

Note: For areas greater than 40 square feet, separate the area into sections and use a new disposable cleaning cloth for each section.



Work Practice Requirements Specific to Exterior Renovations

The firm must:

(A) Close all doors and windows within 20 feet of the renovation.

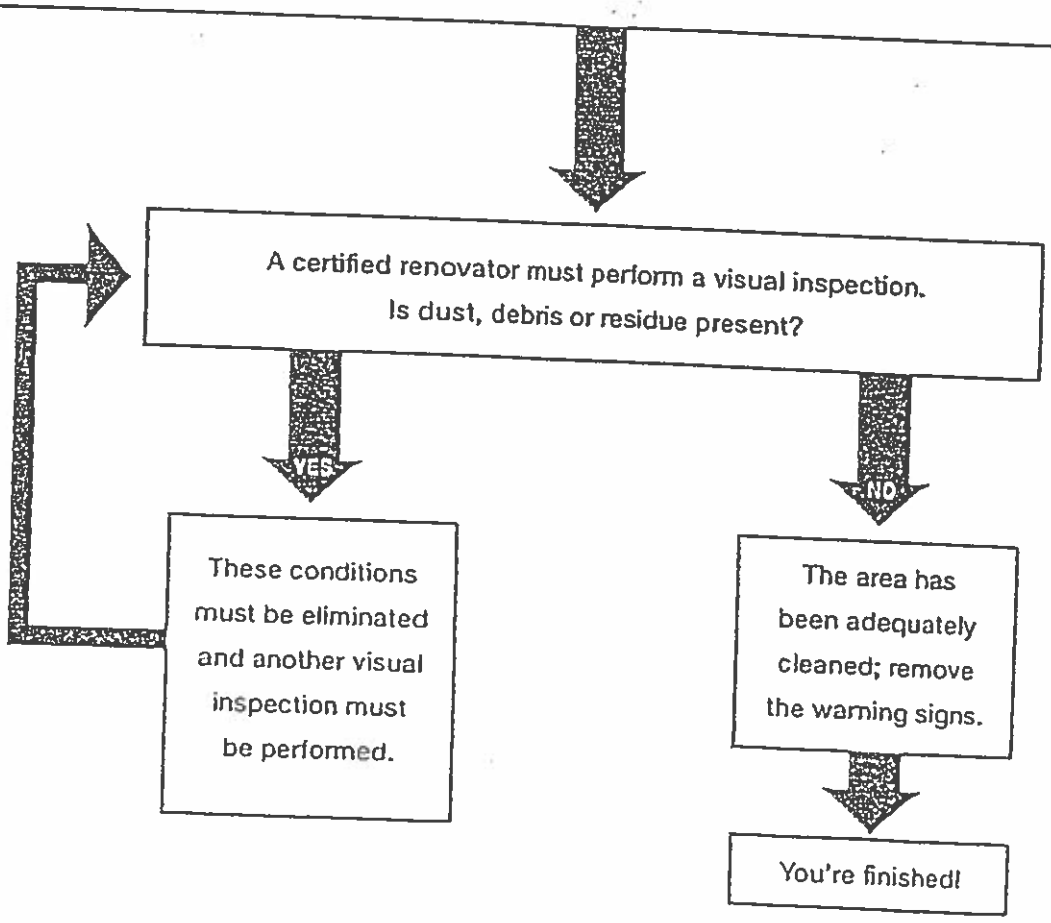
(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting in a manner that allows workers to pass through while confining dust and debris.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending a minimum of 10 feet beyond the perimeter or a sufficient distance to collect falling paint debris, whichever is greater.

(D) In situations such as where work areas are in close proximity to other buildings, windy conditions, etc., the renovation firm must take extra precautions in containing the work area, like vertical containment.

(E) After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains. The firm must:

1. Collect all paint chips and debris, and seal it in a heavy-duty bag.
2. Remove and dispose of protective sheeting as waste.
3. Waste transported from renovation activities must be contained to prevent release of dust and debris.



How Is My Compliance Determined, and What Happens if the Agency Discovers a Violation?

To maximize compliance, EPA implements a balanced program of compliance assistance, compliance incentives, and traditional law enforcement. EPA knows that small businesses that must comply with complicated new statutes or rules often want to do the right thing, but may lack the requisite knowledge, resources, or skills. Compliance assistance information and technical advice helps small businesses to understand and meet their environmental obligations. Compliance incentives, such as EPA's Small Business Policy, apply to businesses with 100 or fewer employees and encourage persons to voluntarily discover, disclose, and correct violations before they are identified by the government (more information about EPA's Small Business Policy is available at www.epa.gov/compliance/incentives/smallbusiness/index.html). EPA's enforcement program is aimed at protecting the public by targeting persons or entities who neither comply nor cooperate to address their legal obligations.

EPA uses a variety of methods to determine whether businesses are complying, including inspecting work sites, reviewing records and reports, and responding to citizen tips and complaints. Under TSCA, EPA (or a state, if this program has been delegated to it) may file an enforcement action against violators seeking penalties of up to $32,500 per violation, per day. The proposed penalty in a given case will depend on many factors, including the number, length, and severity of the violations, the economic benefit obtained by the violator, and its ability to pay. EPA has policies in place to ensure penalties are calculated fairly. These policies are available to the public. In addition, any company charged with a violation has the right to contest EPA's allegations and proposed penalty before an impartial judge or jury.

EPA encourages small businesses to work with the Agency to discover, disclose, and correct violations. The Agency has developed self-disclosure, small business, and small community policies to modify penalties for small and large entities that cooperate with EPA to address compliance problems. In addition, EPA has established compliance assistance centers to serve over one million small businesses (see Construction Industry Compliance Assistance Center for information regarding this rule at www.cicacenter.org). For more information on compliance assistance and other EPA programs for small businesses, please contact EPA's Small Business Ombudsman at 202-566-2075.

Frequent Questions

What is the legal status of this guide?

This guide was prepared pursuant to section 212 of SBREFA. EPA has tried to help explain in this guide what you must do to comply with the Toxic Substances Control Act (TSCA) and EPA's lead regulations. However, this guide has no legal effect and does not create any legal rights. Compliance with the procedures described in this guide does not establish compliance with the rule or establish a presumption or inference of compliance. The legal requirements that apply to renovation work are governed by EPA's 2008 Lead Rule, which controls if there is any inconsistency between the rule and the information in this guide.

Is painting considered renovation if no surface preparation activity occurs?

No. If the surface to be painted is not disturbed by sanding, scraping, or other activities that may cause dust, the work is not considered renovation and EPA's lead program requirements do not apply. However, painting projects that involve surface preparation that disturbs paint, such as sanding and scraping, would be covered.

What if I renovate my own home?

EPA's lead program rules apply only to renovations performed for compensation; therefore, if you work on your own home, the rules do not apply. EPA encourages homeowners to use lead-safe work practices, nonetheless, in order to protect themselves, their families, and the value of their homes.

Is a renovation performed by a landlord or employees of a property management firm considered a compensated renovation under EPA's lead program rules?

Yes. The receipt of rent payments or salaries derived from rent payments is considered compensation under EPA's lead program. Therefore, renovation activities performed by landlords or employees of landlords are covered.

Do I have to give out the lead pamphlet seven days prior to beginning renovation activities?

The 7-day advance delivery requirement applies only when you deliver the lead pamphlet by mail; otherwise, you may deliver the pamphlet anytime before the renovation begins so long as the renovation begins within 60 days of the date that the pamphlet is delivered. For example, if your renovation is to begin May 30, you may deliver the pamphlet in person anytime between April 1 and start of the project on May 30, or you may deliver the pamphlet by mail anytime between April 1 and May 23.

Tips for Easy Compliance

1. Do you convert the sample forms on pages 24 and 25 of this handbook and include in the renovate right pamphlet (see page 31 for information on how to get copies of the pamphlet) on the back of your customer renovation or repair contracts. The completed forms can be used to help you fulfill your recordkeeping requirements.
2. Plan ahead to obtain enough copies of the lead pamphlet (see page 30 for information on how to get copies of the pamphlet).

Where Can I Get More Information?

Further information is available from the National Lead Information Center (800-424-LEAD) and on the Internet at www.epa.gov/lead. Available resources include:

- Full text version of the Lead-Based Paint Renovation, Repair, and Painting Program regulation.
- Interpretive guidance which provides more detailed information on the rule's requirements.
- A downloadable version of the lead pamphlet.

Why Is Lead Paint Dangerous?

Lead gets into the body when it is swallowed or inhaled. People, especially children, can swallow lead dust as they eat, play, and do other normal hand-to-mouth activities. People may also breathe in lead dust or fumes if they disturb lead-based paint. People who sand, scrape, burn, brush, blast or otherwise disturb lead-based paint risk unsafe exposure to lead.

Lead is especially dangerous to children under 6 years of age.

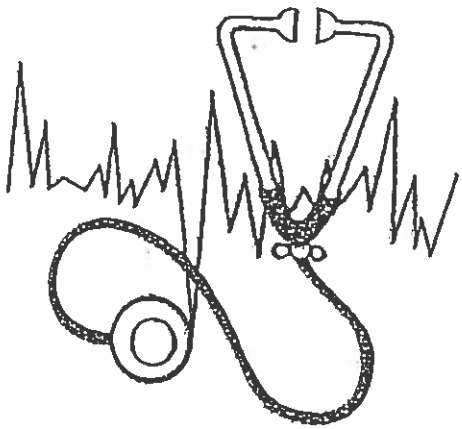
Lead can affect children's brains and developing nervous systems, causing:

- Reduced IQ and learning disabilities.
- Behavioral problems.

Even children who appear healthy can have dangerous levels of lead in their bodies.

Lead is also harmful to adults. In adults, low levels of lead can pose many dangers, including:

- High blood pressure and hypertension.
- Pregnant women exposed to lead can transfer lead to their fetus.



Other Resources

For additional information on how to protect yourself and your customers from lead paint hazards, visit www.epa.gov/lead or call the National Lead Information Center at 1-800-424-LEAD (5323). Available documents include:

- *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*
- *Joint EPA-HUD Curriculum: Lead Safety for Remodeling, Repair, and Painting*
- *Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work*
- *Testing Your Home for Lead in Paint, Dust, and Soil*
- *Fight Lead Poisoning with a Healthy Diet*
- *Protect Your Family From Lead In Your Home*
- *Lead in Your Home: A Parent's Reference Guide*

Key Terms

Certificate of Mailing — A written verification from the Postal Service that you mailed the lead pamphlet to an owner or a tenant. This is less expensive than certified mail, which is also acceptable for meeting the Lead-Based Paint Renovation, Repair, and Painting Program requirements. (*Note: If using this delivery option, you must mail the pamphlet at least seven days prior to the start of renovation.*)

Certified Inspector or Risk Assessor — An individual who has been trained and is certified by EPA or an authorized state or Indian Tribe to conduct lead-based paint inspections or risk assessments.

Child-occupied Facility — May include, but is not limited to, day care centers, pre-schools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. The regulation defines a "child-occupied facility" as a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours.

Cleaning Verification Card — a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

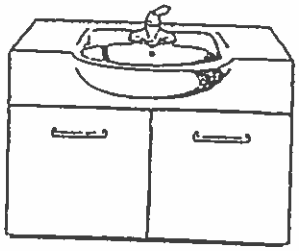
Common Area — A portion of a building that is generally accessible to all residents or users. Common areas include (but are not limited to) hallways, stairways, laundry rooms, recreational rooms, playgrounds, community centers, and fenced areas. The term applies to both interiors and exteriors of the building. (*Note: Lead-Based Paint Renovation, Repair, and Painting Program requirements related to common areas apply only to multi-family housing.*)

Component — A specific design or structural element or fixture distinguished by its form, function, and location. A component can be located inside or outside the dwelling.

Examples

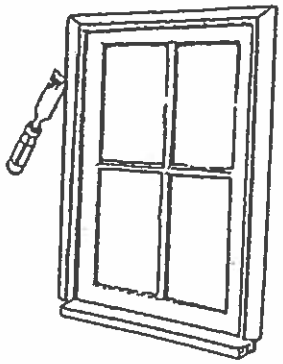
Interior

Ceilings
Crown molding
Walls
Doors and trim
Floors
Fireplaces
Radiators
Shelves
Stair treads
Windows and trim
Built-in cabinets
Beams
Bathroom vanities
Counter tops
Air conditioners



Exterior

Painted roofing
Chimneys
Flashing
Gutters and downspouts
Ceilings
Soffits
Doors and trim
Fences
Floors
Joists
Handrails
Window sills and sashes
Air conditioners



Confirmation of Receipt of Lead Hazard Information Pamphlet — A form that is signed by the owner or tenant of the housing confirming that they received a copy of the lead pamphlet before the renovation began. (See sample on page 23.)

Emergency Renovation — Unplanned renovation activities done in response to a sudden, unexpected event which, if not immediately attended to, presents a safety or public health hazard or threatens property with significant damage.

Examples

- *Renovation to repair damage from a tree that fell on a house.*
- *Renovation to repair a burst water pipe in an apartment complex.*
- *Interim controls performed in response to an elevated blood lead level in a resident child.*

Firm — A company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

General Contractor — One who contracts for the construction of an entire building or project, rather than for a portion of the work. The general contractor hires subcontractors (e.g. plumbing, electrical, etc.), coordinates all work, and is responsible for payment to subcontractors.

Housing for the Elderly — Retirement communities or similar types of housing specifically reserved for households of one or more persons 62 years of age or older at the time the unit is first occupied.

Interim Controls — Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead Abatement — Work designed to permanently eliminate lead-based paint hazards. If you are hired to do lead-abatement work only, the Lead-Based Paint Renovation, Repair, and Painting Program does not apply. Abatement does not include renovation, remodeling, or other activities done to repair, restore, or redesign a given building — even if such renovation activities incidentally eliminate lead-based paint hazards. (*Note: Some states define this term differently than described above. Consult your state officials if you are not sure how "lead abatement" is defined in your state.*)

Lead Pamphlet — The lead hazard information pamphlet for the purpose of pre-renovation education is *Renovate Right: Important Lead Hazard Information for Families, Child Care Facilities and Schools*, or an EPA-approved alternative pamphlet. (See page 31 for information on obtaining copies.)

Minor Repair and Maintenance — Activities that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the prohibited work practices is used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Owner — Any person or entity that has legal title to housing, including individuals, partnerships, corporations, government agencies, Indian Tribes, and nonprofit organizations.

Prohibited Practices — Work practices listed below are prohibited during a renovation:

- Open-flame burning or torching of lead-based paint;
- Use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and
- Operating a heat gun on lead-based paint at temperatures above 1100 degrees Fahrenheit.

Record of Notification — A written statement documenting the steps taken to notify occupants of renovation activities in common areas of multi-family housing. (See page 27 for sample.)

Renovation — Modification of all or part of any existing structure that disturbs a painted surface, except for some specifically exempted activities (e.g., minor repair and maintenance). Includes:

- Removal/modification of painted surfaces, components, or structures
- Surface preparation activities (sanding/scraping/other activities that may create paint dust)
- Window replacement

Examples

1. *Demolition of painted walls or ceilings*
2. *Replastering*
3. *Plumbing repairs or improvements*
4. *Any other activities which disturb painted surfaces*

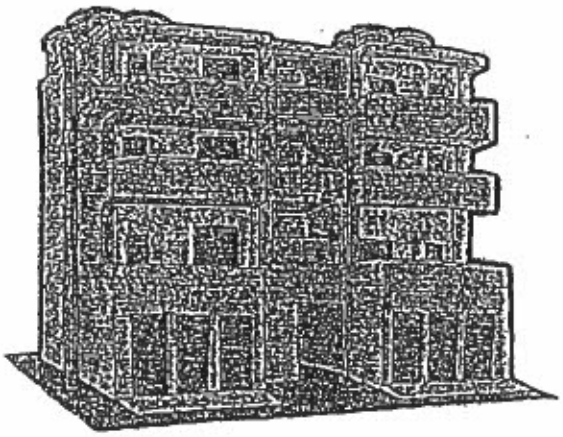
Renovation Notice — Notice to tenants of renovations in common areas of multi-family housing. (See sample form on page 27.) Notice must describe nature, location, and expected timing of renovation activity; and must explain how the lead pamphlet may be obtained free of charge.

Renovator — A person who either performs or directs workers who perform renovation. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal program. *(Note: Because the term "renovation" is defined broadly by the Lead-Based Paint Renovation, Repair, and Painting Program, many contractors who are not generally considered "renovators", as that term is commonly used, are considered to be "renovators" under the program and must follow the rule's requirements.)*

Self-Certification of Delivery — An alternative method of documenting delivery of the lead hazard information pamphlet to a tenant. This method may be used whenever the tenant is unavailable or unwilling to sign a confirmation of receipt of lead pamphlet. (See sample form on page 23.) *(Note: This method is not a permissible substitute for delivery of the lead pamphlet to an owner.)*

Supplemental Renovation Notice — additional notification that is required when the scope, location, or timing of project changes.

Zero-Bedroom Dwelling — Any residential dwelling where the living area is not separated from the sleeping area. This term includes efficiency and studio apartments, dormitory housing, and military barracks.



Current Sample Pre-Renovation Form

For use until April 2010.

Confirmation of Receipt of Lead Pamphlet

__ I have received a copy of the lead pamphlet informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed name of recipient _____ Date _____

Signature of recipient _____

Self-Certification Option (for tenant-occupied dwellings only) — If the lead pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

__ Refusal to sign — I certify that I have made a good faith effort to deliver the lead pamphlet to the rental dwelling unit listed below at the date and time indicated and that the occupant refused to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

__ Unavailable for signature — I certify that I have made a good faith effort to deliver the lead pamphlet to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

Printed name of person certifying attempted delivery _____

Date and time lead pamphlet delivery _____

Signature of person certifying lead pamphlet delivery _____

_____

_____

Unit Address _____

Note Regarding Mailing Option — As an alternative to delivery in person, you may mail the lead pamphlet to the owner and/or tenant. Pamphlet must be mailed at least 7 days before renovation (Document with a certificate of mailing from the post office).


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Future Sample Pre-Renovation Form

This sample form may be used by firms to document compliance with the requirements of the Federal Lead-Based Paint Renovation, Repair, and Painting Program after April 2010.

Occupant Confirmation

Pamphlet Receipt

___ I have received a copy of the lead hazard information pamphlet informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Owner-occupant Opt-out Acknowledgment

___ (A) I confirm that I own and live in this property, that no child under the age of 6 resides here, that no pregnant woman resides here, and that this property is not a child-occupied facility.

Note: A child resides in the primary residence of his or her custodial parents, legal guardians, foster parents, or informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

Note: A child-occupied facility is a pre-1978 building visited regularly by the same child, under 6 years of age, on at least two different days within any week, for at least 3 hours each day, provided that the visits total at least 60 hours annually.

If Box A is checked, check either Box B or Box C, but not both.

___ (B) I request that the renovation firm use the lead-safe work practices required by EPA's Lead-Based Paint Renovation, Repair, and Painting Rule; or

___ (C) I understand that the firm performing the renovation will not be required to use the lead-safe work practices required by EPA's Lead-Based Paint Renovation, Repair, and Painting Rule.

_____

Printed Name of Owner-occupant

_____

Signature of Owner-occupant _____

Signature Date

Renovator's Self Certification Option (for tenant-occupied dwellings only)

Instructions to Renovator: If the lead hazard information pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

___ Declined – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below at the date and time indicated and that the occupant declined to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

___ Unavailable for signature – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door or by (fill in how pamphlet was left)._____

_____

Printed Name of Person Certifying Delivery _____

Attempted Delivery Date

_____

Signature of Person Certifying Lead Pamphlet Delivery

_____

_____

Unit Address

Note Regarding Mailing Option — As an alternative to delivery in person, you may mail the lead hazard information pamphlet to the owner and/or tenant. Pamphlet must be mailed at least 7 days before renovation. Mailing must be documented by a certificate of mailing from the post office.


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Sample Forms (continued)

Renovation Notice — *For use in notifying tenants of renovations in common areas of multi-family housing.*

The following renovation activities will take place in the following locations:

_____

Activity *(e.g., sanding, window replacement)*

_____

Location *(e.g., lobby, recreation center)*

The expected starting date is_____and the expected ending date is_____. Because this is an older building built before 1978, some of the paint disturbed during the renovation may contain lead. You may obtain a copy of the pamphlet, *Renovate Right*, by telephoning me at_____. Please leave a message and be sure to include your name, phone number and address. I will either mail you a pamphlet or slide one under your door.

_____ _____

Date Printed name of renovator

_____

Signature of renovator

Record of Tenant Notification Procedures — *Future Sample Renovation Recordkeeping Checklist*

Project Address_____

Street (apt. #)_____

City_____State_____Zip Code_____

_____ _____

Owner of multi-family housing Number of dwelling units

_____

Method of delivering notice forms *(e.g. delivery to units, delivery to mailboxes of units)*

_____

Name of person delivering notices

_____ _____

Signature of person delivering notices Date of Delivery

28

Future Sample Renovation Recordkeeping Checklist
(effective April 2010)

Name of Firm: _____

Date and Location of Renovation: _____

Brief Description of Renovation: _____

Name of Assigned Renovator: _____

Name(s) of Trained Worker(s), if used: _____

Name of Dust Sampling Technician,
Inspector, or Risk Assessor, if used: _____

___ Copies of renovator and dust sampling technician qualifications (training certificates, certifications) on file.

___ Certified renovator provided training to workers on (check all that apply):

- ___ Posting warning signs
- ___ Maintaining containment
- ___ Waste handling
- ___ Setting up plastic containment barriers
- ___ Avoiding spread of dust to adjacent areas
- ___ Post-renovation cleaning
- ___ Test kits used by certified renovator to determine whether lead was present on components affected by renovation (identify kits used and describe sampling locations and results):

_____

___ Warning signs posted at entrance to work area.

___ Work area contained to prevent spread of dust and debris

- ___ All objects in the work area removed or covered (interiors)
- ___ HVAC ducts in the work area closed and covered (interiors)
- ___ Windows in the work area closed (interiors)
- ___ Windows in and within 20 feet of the work area closed (exteriors)
- ___ Doors in the work area closed and sealed (interiors)
- ___ Doors in and within 20 feet of the work area closed and sealed (exteriors)
- ___ Doors that must be used in the work area covered to allow passage but prevent spread of dust
- ___ Floors in the work area covered with taped-down plastic (interiors)
- ___ Ground covered by plastic extending 10 feet from work area—plastic anchored to building and weighed down by heavy objects (exteriors)
- ___ If necessary, vertical containment installed to prevent migration of dust and debris to adjacent property (exteriors)

___ Waste contained on-site and while being transported off-site.

___ Work site properly cleaned after renovation

- ___ All chips and debris picked up, protective sheeting misted, folded dirty side inward, and taped for removal
- ___ Work area surfaces and objects cleaned using HEPA vacuum and/or wet cloths or mops (interiors)

___ Certified renovator performed post-renovation cleaning verification (describe results, including the number of wet and dry cloths used): _____

_____

___ If dust clearance testing was performed instead, attach a copy of report

___ I certify under penalty of law that the above information is true and complete.

_____ _____

Name and title


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Where Can I Get Copies of the Lead Pamphlet?

For single copies, in Spanish or English, of *Renovate Right: Important Lead Hazard Information for Families, Child Care Facilities and Schools* (EPA-740-F-08-002), call the National Lead Information Center (NLIC) at 1-800-424-LEAD. For any orders, be sure to use the appropriate stock reference number listed above.

There are four ways to get multiple copies:

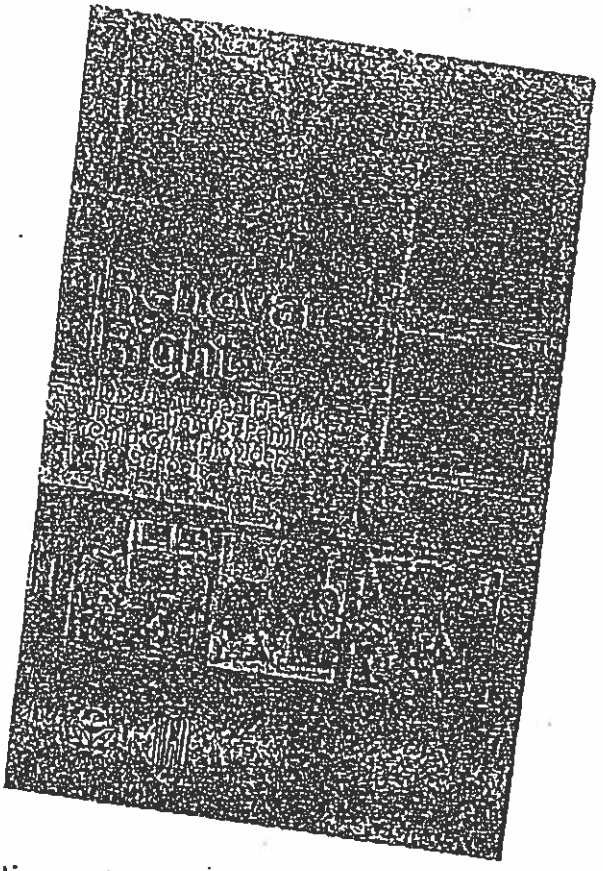
1. Call the Government Printing Office order desk at (202) 512-1800.

2. Send fax requests to (202) 512-2233.

3. Request copies in writing from:
   Superintendent of Documents
   P.O. Box 371954
   Pittsburgh, PA 15250-7954

4. Obtain copies via the Internet at
   www.epa.gov/lead/pubs/brochure.htm

For single copies, in Spanish or English, of *Renovate Right: Important Lead Hazard Information for Families, Child Care Facilities and Schools* (EPA-740-F-08-002), call the National Lead Information Center (NLIC) at 1-800-424-LEAD. For any orders, be sure to use the appropriate stock reference number listed above.



The pamphlet may be photocopied for distribution as long as the text and graphics are readable.

Paperwork Reduction Act Notice: The incremental public burden for the collection of information contained in the Lead Renovation, Painting and Repair Program, which are approved under OMB Control No. 2070-0155 and identified under EPA ICR No. 1715, is estimated to average approximately 54 hours per year for training providers. For firms engaged in regulated renovation, repair, and painting activities, the average incremental burden is estimated to be about 6.5 hours per year. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (Mail Code 2822T), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Include the OMB number identified above in any correspondence. Do not send any completed form(s) to this address. The actual information or form(s) should be submitted in accordance with the instructions accompanying the form(s), or as specified in the corresponding regulations.

NOTICE

This guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121. THIS DOCUMENT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE UNITED STATES. The statements in this document are intended solely as guidance to aid you in complying with the Lead-Based Paint Renovation, Repair, and Painting Program requirements in 40 CFR 745, Subpart E. EPA may decide to revise this guide without public notice to reflect changes in EPA's approach to implementing the Lead-Based Paint Renovation, Repair, and Painting Program or to clarify and update text. To determine whether EPA has revised this guide and/or to obtain copies, contact EPA's Small Business Ombudsman at 202-566-2075, or contact the National Lead Information Center at 1-800-424-LEAD(5323), or on the web at www.epa.gov/lead/pubs/nlic.htm.

1-800-424-LEAD (5323)
www.epa.gov/lead

United States
Environmental Protection
Agency

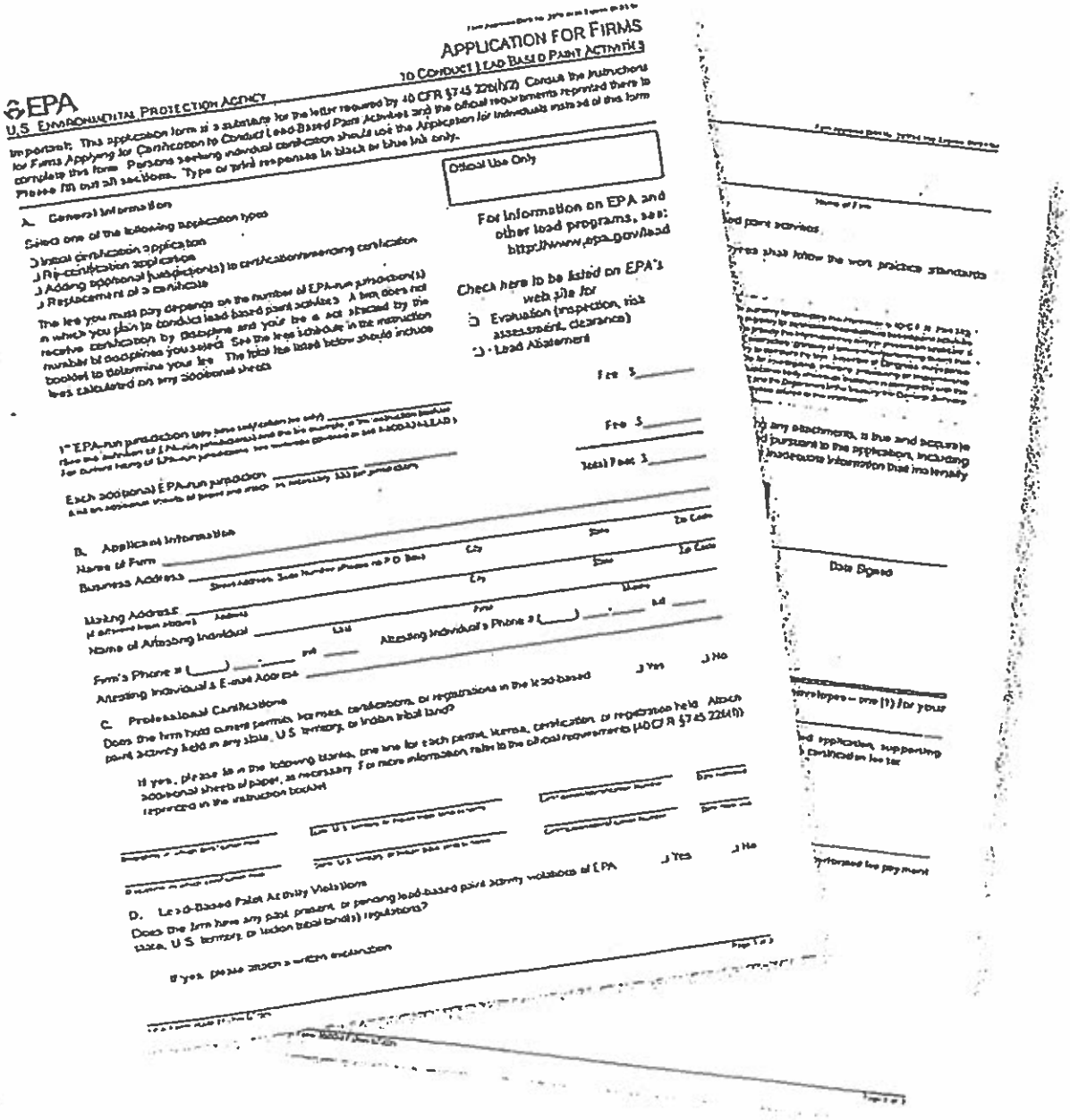
Office of Prevention
Pesticides, and
Toxic Substances

EPA 747-B-99-001
October 2009
https://www.epa.gov/lead

EPA

Application and Instructions for Firms

Applying for Certification to Conduct Lead-Based Paint Activities and Renovations



[This page intentionally left blank]

EPA

Form Approved OMB No. 2070-0155 Expires 10/31

U.S. ENVIRONMENTAL PROTECTION AGENCY

APPLICATION FOR FIRM TO CONDUCT LEAD-BASED PAINT ACTIVITIES AND/OR RENOVATIO

Important: This application is required by 40 CFR §745.89(a) for renovations and is a substitute for the letter required by §745.226(f)(2) for abatement. Consult the instructions for firms applying for certification to conduct lead-based activities or renovations For abatement activities, persons seeking individual certification should use the *Application for Individuals* instead of this form. Please fill out all sections. Type or print responses in black or blue ink only.

A. General Information

Select one of the following application types for lead-based paint activities:(abatement, inspection, risk assessment) and/or Repair, Renovation, and Painting (RRP) (renovation or dust sampling technician)

- ○ Initial certification application - lead-based paint activities
- ○ Initial certification application - renovation
- ○ Re-certification application - lead-based paint activities
- ○ Re-certification application - renovation
- ○ Combined certification - lead-based paint activities and renovation
- ○ Combined re-certification - lead-based paint activities and renovation
- ○ Adding jurisdiction[s]* to certification/amending certification
- ○ Replacement of a certificate

Official Use Only

For information on EPA and other Lead Programs, see: www.epa.gov/lead. Check below for how your firm should be listed on EPA's web site:

- ___ for Evaluation
- ___ for Lead Abatement
- ___ for Renovation

*The fee you must pay for the above certifications depends on the number of EPA-run jurisdiction[s] in which you plan to conduct lead-based paint activities (jurisdictions do not apply to renovation certification). See the fees schedule in the instructions to determine your fee. The total fee listed below should include fees calculated on any additional sheets.

1st EPA-run jurisdiction (pay base certification fee only)..... Fee: $
(See the definition of EPA-run jurisdiction[s], the fee example and an explanation of the combined application in the instructions. For current listing of EPA-run jurisdictions, see www.epa.gov/lead or call 1-800-424-LEAD).

Each additional EPA-run jurisdiction: ..... Fee: $
(List on additional sheets of paper and attach, as necessary. $35 per jurisdiction)

Certification for Renovations only (jurisdictions do not apply to renovation certification):..... Fee: $

Total Fee $

B. Applicant Information

Check here if you are a federally-recognized Indian tribe seeking certification as a firm.

Name of Firm:

Business Address:
Street Address, Suite Number (Please no P.O. Box) City State Zip Code

Mailing Address:
(if different from above) Street Address, Suite Number (Please no P.O. Box) City State Zip Code

Name of Attesting Individual:
Last First Middle

Firm's Phone #: ext #: Attesting Individual's Phone #: ext.

Attesting Individual's E-mail Address:

C. Professional Certifications

Does the firm hold current permits, licenses, certifications, or registrations in the lead-based paint field in any state, U.S. territory, or Indian tribal land? ○ Yes ○ No

If yes, please fill in the following blanks, one line for each permit, license, certification, or registration held. Attach additional sheets of paper, as necessary.

Type of certification held	State, U.S. Territory, or Indian tribal land(s) name	Certification/Identification Number	Date received
Type of certification held			

D. Lead-Based Paint Activity or Renovation Violation[s]

Does the firm have any past, present, or pending lead-based paint violations of EPA, State, U.S. territory, or Indian tribal land(s) regulations? If yes, please attach a written explanation. ○ Yes ○ No

E. Certification Statement

Fill in the blanks in the following statement as indicated.

Name of Attesting Individual attests that Name of Firm

shall only employ appropriately certified individuals to conduct lead-based paint activities.

(Name of Firm) and its employees shall follow the work practic standards set forth in 40 CFR § 745.227 for conducting lead-based paint activities or 40 CFR § 745.85 for conducting renovations at times.

Privacy Act Statement: This statement is provided pursuant to the Privacy Act of 1974, 5 U.S.C. §552a. The authority for collecting this information is 40 C.F.R. Part 745, and 15 U.S.C. §§2682 and 2684. The information collected on this form will be used to establish the applicant's eligibility for certification to conduct lead-based paint activities and renovations in target housing and child-occupied facilities. Disclosure of this information is voluntary; however, the failure to provide this information may delay or prevent an applicant's certification. This information may be disclosed in appropriate and limited circumstances to: EPA employees, contractors, grantees or others when performing duties that are compatible with the purpose for which this information is collected and when this information is necessary to complete the task; a member of Congress in response to a request made with your consent and on your behalf; to appropriate law enforcement agencies responsible for investigating, enforcing, prosecuting or implementing specific statutes, codes or regulations and this information is relevant to that responsibility; an appropriate adjudicative body when such disclosure is compatible with the purpose for which this information is collected and the EPA or the United States has an interest in the proceeding; and the Department of the Treasury, the General Services Administration, the General Accounting Office and other Federal, State, and Local Agencies for authorized activities related to this information.

I hereby attest and affirm that the information included on this application, including any attachments, is true and accurate to the best c my belief and knowledge. I acknowledge that any certification issued pursuant to this application, including any attachments, will be subject to revocation if issuance was based on incorrect or inadequate information that materially affected the decision to issue the certification.

Attesting Individual's Signature Date Signed

(Please sign legibly within the boundaries of the box above.)

Attesting Individual's Title (please print)

Before you mail your application and certification fee, make sure that you have:

- Filled out all applicable sections of the application
- Signed and dated the application
- Made a copy of your application for your files
- Enclosed the appropriate certification fees (check or money order)
- Printed "*Lead Program User Fees*" on the check or money order
- For more information, see the fees section of the instructions

Mail original completed application, supporting materials, and the certification fee to:

U.S. EPA
Lead User Fees
P.O. Box 979072
St. Louis, MO 63197-9000

INSTRUCTIONS FOR FIRMS APPLYING FOR CERTIFICATION TO CONDUCT LEAD-BASED PAINT ACTIVITIES AND RENOVATIONS

Firms must apply to the U.S. Environmental Protection Agency (EPA) to be certified or recertified to perform or offer to perform lead-based paint activities or renovations in states, U.S. territories, and all Indian tribal land(s) in any one EPA Region where EPA implements the lead-based paint certification program. If EPA does not administer the certification program in an area where a firm wishes to work, the firm must apply directly to that state, territory, or Indian tribe for certification. EPA has up to 90 days after receiving a complete request for certification to approve or disapprove the application.

Firms must become certified for lead-based paint activities to conduct abatements, inspections and risk assessments. Firms must become certified under the Renovation, Repair and Painting Rule to conduct renovations and post-renovation dust sampling.

These instructions supplement OMB approved form No. 2070-0155, *Application and Instructions for Firms*. Please note that you must use a separate form for each application type (i.e., initial certification, re-certification, amending certification, adding jurisdictions, or replacement of a certificate).

How to Apply for Initial Certification

Firms submit their application and payment by mail by doing the following:

- Complete, sign, and date EPA form 8500-27 (Rev 08/09). The form can be filled out by hand or by using a fillable form on your computer (http://www.epa.gov/lead/pubs/firmapp.pdf).
- Calculate the appropriate fee using the fees schedule provided in these instructions.
- Print *"Lead Program User Fees"* on the check or money order for the fee and mail it with your application to the following address:

  U.S. EPA
  Lead User Fees
  P.O. Box 979072
  St. Louis, MO 63197-9000

How to Apply for Re-certification

Firms must be re-certified every three (3) years for lead-based paint activities and five (5) years for renovations. To ensure that your firm will be re-certified before its current certification expires, you should submit a re-certification application well before the expiration date. For re-certification, complete all sections of the application and follow the mailing instructions described in the "Initial Certification" section of these instructions.

Combined Applications

Firms can apply for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule on a single application for a single fee of $550. For Tribal government entities, the fee is $20. Firms that apply on separate applications will have to pay the appropriate fee for each. The lower fee would only apply when a single firm applies for both certifications on the same firm application in a State or Tribe where EPA implements both programs.

Amended Application

Any change to the information reported to EPA in a firm's most recent certification application must be reported in an amended certification application. There is no cost associated with the submission of an amended certification.

Amended applications must be sent to the following address:

U.S. EPA
P.O. Box 14417
Washington, DC 20044-4417

Replacement of a Certificate

To replace a certificate, complete only sections A (General Information), B (Applicant Information), and E (Certification Statement) of the application and follow the mailing instructions described in the "Initial Certification" section of these instructions.

Incomplete Application

If any components of your application are missing, your application will become inactive for a period not to exceed 30 days until the application is made complete. If you do not complete your application, EPA will return the application package. You may apply again with a complete package. Please call 1-800-424-LEAD to find out if your application is complete.

Firms Completing Applications for Individuals Under Lead-based Paint Activities

If the firm is assisting in completing applications for individuals who are applying for certification under lead-based paint activities, please be aware of the following:

- Individuals must have an address and phone number different from the firm's.
- Individuals must sign and date the application.
- Individual's name, and discipline should appear on the front of the application fee payment (check or money order), even if it is hand-written, if the firm pays for the individual.
- EPA forwards all correspondence to individuals who have signed the application attesting to their willingness to comply with the work practice standards found at 40 CFR §745.227 and/or at 40 CFR §745.85.
- EPA forwards copies of the individual's approval letter and certificate to the firm upon written request of the applicant; however, the approval letter, identification badge, and certificate remain the property of the individual.

Fees

The fee for applying for certification, re-certification, and other requests is listed in the following schedule. It is important that you:

- Calculate fee based on the number of EPA-run jurisdiction(s) in which you plan to operate.
  a) If applying for lead-based paint activities certification, submit a $35 dollar fee each additional EPA-run state or territory, or all Indian tribal land[s] located in each EPA Region, (e.g., if applying for certification in multiple Indian Tribal lands located in Region 5 and Region 7 you must pay a $35 fee per Region, or a total of $70).
  b) If applying for lead RRP certification, there is NO jurisdictional fee – the certification or re-certification fee is a national certification for all jurisdictions where EPA administers the program.
- Write your total fee amount in section A of the application, even if you attach additional sheets of paper listing additional EPA-run jurisdictions.
- Make the check or money order payable to U.S. Environmental Protection Agency. Other methods of payment include wire transfer, electronic funds transfer, and, for government payers only, on-line payment agency collection (OPAC).

Fees Schedule

Description	Fee	
Replacement Certificate	$15	
Lead-based Paint Activities Certification	Certification	Recertification
Firm	$550	$550
Tribal Firm	$20	$20
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20
Multi-jurisdictional Certification Fee*	$35 for each additional EPA-run jurisdiction**	
Renovation Firm Certification	Certification	Recertification
Firm	$300	$300
Tribal Firm	$20	$20
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20

*Multi-jurisdictional certification applies to lead-based paint activities for an applicant applying in more than one EPA-run jurisdiction. This fee does not apply to renovation firm certification.

**An EPA-run jurisdiction includes an EPA-run state, a U.S. territory, or all Indian tribal land(s) in any one EPA Region. (For current listing of EPA-run jurisdictions, see www.epa.gov/lead or call 1-800-424-LEAD.)

Fee Example

If your firm is applying for initial certification for lead-based paint activities in two states and all Indian tribal land(s) in any one EPA Region, your firm is required to pay $620:

Initial lead-base paint activities firm certification fee	$550
One additional state fee*	$ 35
All Indian tribes in one EPA Region fee*	$ 35
Total Amount Due:	$620

If your firm is applying for initial certification to conduct renovations and intends to work in multiple states, your firm is required to pay $300:

Initial renovation firm certification fee	$300
Additional jurisdiction fee does not apply to renovation certification	$ 0
Total Amount Due:	$300

If your firm is submitting a combined application for initial certification in lead-based paint activities and renovation, your firm is required to pay $550:

Initial combined certification fee for lead-based paint activities and renovation	$550
Total Amount Due:	$550

*Each certification request for lead-based paint activities includes the fee for one EPA-run jurisdiction. The multi-jurisdiction fee does not apply to renovation certification.

EPA's Certification Fees Refund Policy

Firms having submitted an application and associated fees for certification or re-certification who wish to withdraw their application prior to Agency approval will receive a fee refund based upon the schedule listed below. Firms who request a refund more than 10 days after the Agency receives the application will not receive a 100 percent refund.

Number of Days Following Agency Receipt of Application	Percent Reimbursable (based upon total fees submitted)
up to 10 days	100%
11 to 60 days	75%
61 to 120 days	50%
121 or more days	25%

Note: Refunds will only be made after EPA verifies fee receipt and deposit by the U.S. Treasury.

Firms must notify the Agency in writing in order to qualify for a refund. The date of withdrawal is the date on which the Agency received the withdrawal notification.

EPA will not refund fees after granting a firm certification or re-certification. If your application is disapproved, EPA will not refund fees.

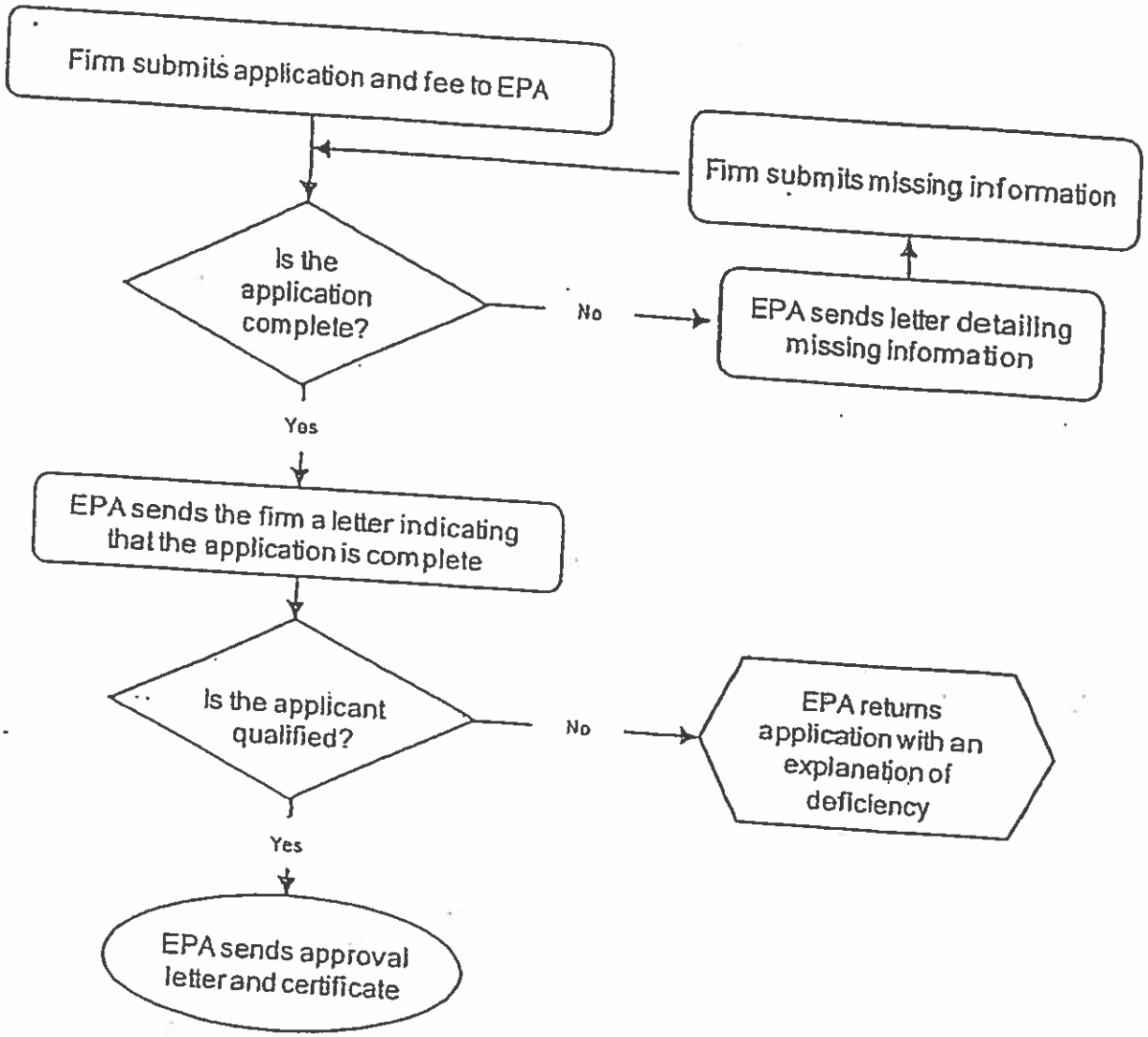
Refunds are not available for replacing a certificate.

Refund and withdrawal requests must be sent to the following address:

U.S. EPA
P.O. Box 14417
Washington, DC 20044-4417

Application Process for Firm Certification

EPA processes applications on a first-come, first-served basis. The following flowchart depicts the application process for firm certification. EPA has up to 90 days after receiving a complete request for certification to approve or disapprove the application.



Paperwork Reduction Act Notice: The annual public burden for this collection of information is estimated to be 7.5 hours for firms, including the time needed for reading the instructions and completing the necessary information contained in this form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Director, Collection Strategies Division, Office of Environmental Information (OEI), U.S. Environmental Protection Agency (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Include OMB number 2070-0155 in any correspondence. Do not send the completed form or requested information to this address. The actual information or form should be submitted in accordance with the instructions accompanying the form, or as specified in the corresponding regulations.

SMOKE DETECTOR PROVISIONS

Code of Virginia
Title 55. Property and Conveyances
Chapter 13.2. Virginia Residential Landlord and Tenant Act

§ 55-248.16. Tenant to maintain dwelling unit.

Bills amending this Section in 2016 General Assembly.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55248.13, if such disposal is on the premises;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, airconditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and

the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

1974, c. 680; 1987, c. 428; 1999, c. 80; 2000, c. 760; 2003, c. 355; 2004, c. 226; 2008, cc. 489, 617, 640; 2009, c. 663; 2011, c. 766; 2014, c. 632.

Code of Virginia
Title 55. Property and Conveyances
Chapter 13. Landlord and Tenant

§ 55-225.4. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;

6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative, and shall maintain such smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

9. Not paint or disturb painted surfaces, or make alterations in the dwelling unit, without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

10. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

11. Abide by all reasonable rules and regulations imposed by the landlord.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

2001, c. 524; 2008, c. 640; 2011, c. 766.

Code of Virginia
Title 36. Housing
Chapter 6. Uniform Statewide Building Code

§ 36-99.5. Smoke detectors for the deaf and hearing-impaired.

Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;

2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify. New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein; however, any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.).

1984, c. 753; 1988, c. 183; 2011, c. 76[illegible]

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 9. General Powers of Local Governments

§ 15.2-922. Smoke detectors in certain buildings.

Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke detectors be installed in the following structures or buildings: (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used or offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons, and (iii) rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations. Smoke detectors installed pursuant to this section shall be installed in conformance with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.), and any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code. The ordinance shall allow the type of smoke detector to be either battery operated or AC powered units. Such ordinance shall require that the owner of any unit which is rented or leased, at the beginning of each tenancy and at least annually thereafter, shall furnish the tenant with a certificate that all required smoke detectors are present, have been inspected, and are in good working order. Except for smoke detectors located in hallways, stairwells, and other public or common areas of multifamily buildings, interim testing, repair, and maintenance of smoke detectors in rented or leased units shall be the responsibility of the tenant; however, the owner shall be obligated to service, repair, or replace any malfunctioning smoke detectors within five days of receipt of written notice from the tenant that such smoke detector is in need of service, repair, or replacement.

1981, c. 324, § 15.1-29.9; 1984, c. 387; 1990, c. 184; 1997, c. 587; 2011, c. 766.

MOLD UPDATE

Update on Mold

The general framework for dealing with possible mold conditions under both the VRLTA and the VLTA is described below. For purposes of this summary, the applicable Sections of the VRLTA are referenced.

1. **Move-In Inspection Report**

At the time of the Move-In Inspection, a dwelling unit should be confirmed to have "no visible evidence of mold," and this should be stated on the "Move-In Report" given to the Tenant. Pursuant to VRLTA Section 55-248.11:2, the Tenant has five (5) days to object to the Move-In Report. If Tenant does not object, under the "mold immunity" legislation contained in Virginia Code Section 8.01-226.12, a rebuttable presumption is created that no mold existed in the dwelling unit at the time of the move-in. If, however, the Move-In Report discloses there is mold in the dwelling unit, then Tenant has the option to either terminate the Lease or remain in the dwelling unit under VRLTA Section 55-248.11:2. In the latter case, Landlord must promptly remediate such mold condition.

2. **Tenant Duties**

Once the presumption exists that there is no mold at the time of move-in, the burden then shifts to the Tenant to prevent moisture accumulation and mold growth, and to report any mold conditions to Landlord.

Specifically, VRTLA Section 55-248.16 states in relevant part that:

(1) the tenant has a duty to use reasonable efforts to prevent the accumulation of water and the growth of mold, and
(2) the tenant must notify the landlord of any moisture accumulation or visible evidence of mold after commencement of the tenancy.

3. **Landlord Duties**

If Tenant reports a mold condition to Landlord, then VRLTA Section 55-248.13 requires Landlord to promptly respond to any mold issues raised by the Tenant, and Landlord must otherwise take reasonable steps to prevent the accumulation of moisture in and about the premises.

When there is "visible evidence of mold," VRLTA Section 248.13 requires that Landlord must promptly remediate the mold condition in accordance with the requirements of Virginia Code Section 8.01-226.12. Landlord must thereafter re-inspect the dwelling unit, and confirm there is no longer any visible evidence of mold, and make any written information regarding the mold remediation available to the tenant.

Specifically, the definition of "mold remediation in accordance with professional standards" contained in Virginia Code Section 8.01-226.12 states the following:

> "Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

While the certified Mold Remediator regulations have been repealed in Virginia, any mold remediation performed by a third party contractor for the Landlord must still be in compliance with the applicable EPA standards. The EPA standards do not require a certified mold remediator in the following circumstances:

(1) The mold remediation is in an area in which the mold contamination for the total project affects a total surface area of less than 10 square feet (a minor mold condition); or

(2) An owner, managing agent or their employee performs mold inspections or mold remediation on the owner's residential property, if the property contains no more than four residential dwelling units.

However, for major mold conditions (in an area in which the mold contamination for the total project affects a total surface area of greater than 10 square feet), Landlords should engage a third party contractor with expertise in mold to help handle the particular mold situation.

4. **Tenant Relocation**

If there is a significant mold condition that needs to be addressed, it is sometimes necessary for Landlord to require Tenant to temporarily move out of the dwelling unit so that the necessary mold remediation may occur. Section 55-248.18:2 of the VRLTA provides guidance on such a temporary relocation.

Prepared by Barrie B. Bowers, Esq.

VREB COMPLIANCE

VREB Audits & Compliance by Real Estate Brokers

With the implementation of Real Estate Board Audits, regulatory compliance by Real Estate Brokers is mandatory. Now, more than ever, the review of the Broker's existing policies and procedures, with systematic updates and preventative measures are necessary to avoid fines and penalties. Specifically, a Supervising or Principal Broker is required to conduct a self-audit at least once during each licensure term. DPOR's broker self-audit form can be accessed on-line at http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/Real_Estate/F490-02AUD.pdf, and a copy is also attached.

Accordingly, Real Estate Brokers need to ensure full compliance with all Real Estate Board laws and regulations, as well as fair housing laws. Some areas Brokers should evaluate include:

- Brokerage Set-Up and Compliance;
- Property Management Audit Services;
- In-house Compliance Training Programs for Brokers & administration;
- Preparation for an REB Audit;
- Implementation of Internal Broker Self-Audits; and
- Broker Representation before DPOR.

FutureLaw has a team of attorneys and consultants representing real estate professionals from all across Virginia. For more information about how we might assist you with your compliance matters, please contact us.

Prepared by Ann H. Mink, Consultant

DPOR
Department of Professional and Occupational Regulation

REAL ESTATE FIRM/SOLE PROPRIETORSHIP AUDIT

The Principal Broker/Sole Proprietor or Supervising Broker is required to audit the operations, policies and procedures of the firm/sole proprietorship or cause to have an audit conducted of its operations, policies and procedures at least once during each licensure term. This audit is to assure compliance with the provisions of Chapter 21 of the *Code of Virginia* and the Real Estate Board's regulations. The completed audit form must be signed by the Principal Broker/Sole Proprietor or Supervising Broker of the firm/sole proprietorship and shall be kept on the premises of the firm or sole proprietorship. This form shall be produced for inspection or copying upon request of an authorized agent of the Real Estate Board. This audit does not preclude a random inspection of the firm/sole proprietorship and the Real Estate Board may use the information in the completed audit when conducting an inspection.

All *NO* answers require further explanation on page 5.

FIRM/SOLE PROPRIETORSHIP NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

Is the place of business located in ☐ an office building or ☐ a residence

If the place of business is located in a residence, is it separate and distinct from the living quarters, and accessible by the public?

☐ Yes ☐ No

Firm/Sole Proprietorship License Number: _____

Expiration Date: _____

Principal Broker License:

NAME	LICENSE NO.	EXP. DATE	POSTED/ AVAILABLE	LOCATION
			☐ Y ☐ N	

Supervising Broker Licenses:

	NAME	LICENSE NO.	EXP. DATE	POSTED/ AVAILABLE	LOCATION
1				☐ Y ☐ N	
2				☐ Y ☐ N	
3				☐ Y ☐ N	
4				☐ Y ☐ N	
5				☐ Y ☐ N	

Broker/Salesperson Licenses:

TOTAL NUMBER	ALL CURRENT	LICENSE/ ROSTER	POSTED/ AVAILABLE	LOCATION
	☐ Y ☐ N	☐ L ☐ R	☐ Y ☐ N	

Place of Business

18-VAC 135-20-160:

The principal broker has readily available to the public, in the main place of business, the firm license, the principal broker license and the license of every salesperson and broker active with the firm.	☐ Y ☐ N
The branch office license and a roster of every salesperson or broker assigned to the branch office is posted in a conspicuous place in each branch office.	☐ Y ☐ N ☐ N/A
Each place of business and each branch office is supervised by a supervising broker who exercises reasonable and adequate supervision of the provision of real estate brokerage services by brokers and salespersons assigned to it.	☐ Y ☐ N
If the supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, has the supervising broker certified in writing on a quarterly basis on a board form that the supervising broker complied with the requirements of this subsection?	☐ Y ☐ N

Factors to be considered in determining whether the supervision is reasonable and adequate:

Is the supervising broker available to all licensees under his/her supervision in a timely manner?	☐ Y ☐ N
Is training available and are there written procedures and policies which provide clear guidance and effective oversight by the principal or supervising broker in the following areas:	
Proper handling of escrow deposits?	☐ Y ☐ N
Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management?	☐ Y ☐ N ☐ N/A
Advertising and marketing?	☐ Y ☐ N
Negotiating and drafting of contracts, leases and brokerage agreements?	☐ Y ☐ N
Use of unlicensed individuals?	☐ Y ☐ N
Creating agency or independent contractor relationships?	☐ Y ☐ N
Distribution of information on new or changed statutory or regulatory requirements?	☐ Y ☐ N
Disclosure of matters relating to the condition of the property?	☐ Y ☐ N
Such other matters as necessary to assure the competence of licensees to comply with the Real Estate Board's regulations and Chapter 21 of Title 54.1 of the Code of Virginia?	☐ Y ☐ N
Have all records required in this subsection been maintained for three years?	☐ Y ☐ N

Maintenance of Licenses

18-VAC 135-20-170:

The principal broker has kept the board informed of the current firm name.	☐ Y ☐ N
The principal broker has kept the board informed of the current firm and branch office addresses.	☐ Y ☐ N
The principal broker has returned to the board all licenses of brokers and salespersons who no longer work for the firm within 10 days of the termination.	☐ Y ☐ N

Maintenance and Management of Escrow Accounts

18 VAC 135-20-180:

As of the date of the audit:

How many pending sales does the firm have for which it is holding earnest money deposits?	
How many property management clients does the firm have?	
How many properties does the firm manage for which it is holding security deposits?	
Are there funds earned by the firm/licensee which have not been withdrawn within 6 months?	☐ Y ☐ N

Were the funds from escrow paid to the firm when the funds became due to the licensee?	☐ Y ☐ N
Is the firm holding only the funds required to be deposited in the escrow account?	☐ Y ☐ N

Please list the authorized signatories on the escrow accounts and provide the other requested information below.

	BANK NAME/ AUTHORIZED SIGNATURES	ACCOUNT NAME	Last 4 digit of ACCOUNT NO.	TYPE OF FUND (EMD/SD/Rents)	CURRENT BALANCE
1					
2					
3					
4					
TOTAL STATED EARNEST MONEY DEPOSIT LIABILITY					
TOTAL STATED SECURITY DEPOSIT LIABILITY					

18 VAC 135-20-180 (A): Maintenance of escrow accounts.

If the firm holds down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, moneys advanced, or other escrow funds received on behalf of its client or any other person:	
Is the account maintained in the firm's licensed name?	☐ Y ☐ N
Is the account in a federally insured depository?	☐ Y ☐ N
Is the account labeled "escrow" on the account name, checks, and bank statements?	☐ Y ☐ N
If the escrow funds were used to purchase a CD:	
The broker has not pledged/hypothecated the CD?	☐ Y ☐ N
Does the broker have the original CD?	☐ Y ☐ N
Does the broker retain direct control over the CD?	☐ Y ☐ N

18 VAC 135-20-180(B): Disbursement of funds from escrow accounts.

Were the earnest money deposit funds deposited within 5 business banking days following ratification, or in accordance with the written terms of the contract?	☐ Y ☐ N
Does the property management agreement call for a specific security deposit amount?	☐ Y ☐ N ☐ N/A
If yes, does the security deposit amount on the property management agreement match the corresponding lease security deposit?	☐ Y ☐ N
Were the security deposits deposited into escrow within 5 business banking days following receipt unless otherwise agreed to in writing by the principals to the transaction?	☐ Y ☐ N
If the escrow account bears interest, is there a written disclosure in the contract of sale or lease regarding the disbursement of interest?	☐ Y ☐ N ☐ N/A
If moneys were disbursed from escrow accounts, was there sufficient money on deposit in that account to the credit of the individual client or property involved?	☐ Y ☐ N
Were expenses incidental to closing a transaction deducted from a deposit, unless otherwise agreed to in writing by all principals to the transaction?	☐ Y ☐ N

18 VAC 135-20-180(C): Actions including improper maintenance of escrow funds.

If there were any notes, nonnegotiable instruments, or anything of value not readily negotiable, accepted as a deposit on a contract, offer to purchase, or lease, was its acceptance acknowledged in the agreement?	☐ Y ☐ N
Were the funds properly maintained in the escrow account with no commingling of funds?	☐ Y ☐ N
Does it appear from the escrow account bank statements that funds designated for escrow were deposited into escrow accounts and not into operating or other firm accounts?	☐ Y ☐ N
Are the balances in the escrow accounts sufficient to account for all funds designated to be held by the firm?	☐ Y ☐ N
Did the principal broker report the improper conduct of a licensee for noncompliance with escrow issues within 3 business days?	☐ Y ☐ N

Maintenance and Management of Financial Records

18 VAC 135-20-185:

Are the firm's financial transaction records maintained in the principal broker's place of business, or a branch office?	☐ Y ☐ N
Do the records show:	
from whom the money was received?	☐ Y ☐ N
the date of receipt?	☐ Y ☐ N
the place of deposit?	☐ Y ☐ N
the date of deposit?	☐ Y ☐ N
after the transaction has been completed, the final disposition of the funds?	☐ Y ☐ N
Does the bookkeeping or record keeping system maintained by the principal broker clearly and accurately disclose full compliance with this section?	☐ Y ☐ N
Are the accounting records in sufficient detail to provide necessary information to determine such compliance?	☐ Y ☐ N
Did the broker retain each disclosure of brokerage relationship, each executed contract, agreement and closing statement for a period of 3 years?	☐ Y ☐ N
Did the broker receive money on behalf of others and maintain a complete and accurate record of such receipts and disbursements for a period of 3 years?	☐ Y ☐ N
Did the broker account for or remit any monies in a licensee's possession which belonged to others?	☐ Y ☐ N

Advertising by Licensees

18 VAC 135-20-190:

Was all advertising under the direct supervision of the principal broker?	☐ Y ☐ N
Did all advertising contain the firm's licensed name?	☐ Y ☐ N
Did online advertising comply with the provisions of board regulation 18 VAC 135-20-190.C?	☐ Y ☐ N
Was the advertising clear that the property listed and advertised by the firm was not for sale, exchange, rent or lease by the owner or an unlicensed person?	☐ Y ☐ N
Did any of the advertising include a notice that the owner is a licensee if the licensee owns or has ownership interest in the property advertised and is not using the services of a licensed real estate entity?	☐ Y ☐ N
Is the firm's licensed name on sign(s) displayed outside each place of business?	☐ Y ☐ N
Was the written consent of the seller, landlord, optionor or licensor obtained before advertising the specific property?	☐ Y ☐ N
Did any of the advertising fail to identify the type of services offered when advertising by general description a	☐ Y ☐ N

property not listed by the party making the advertisement?	

Improper Brokerage Commission

18 VAC 135-20-280:

Did the firm/sole proprietorship pay a commission or any valuable consideration to licensed person(s) only?	☐ Y ☐ N

ADDITIONAL EXPLANATION

Please provide further explanation below for any *NO* answers, or for any answers above for which inadequate space was provided. If you require additional space to answer a question, please include a further written response as part of this document.

If you are using this form to enter a voluntary compliance program pursuant to §54.1-2111.1 of the Code of Virginia, please provide a written statement with a plan for rectifying the noncompliance within 90 days from the date of submission to the Board.

AUDIT DECLARATION AFFIRMATION

As the principal broker or supervising broker, I have personally completed or personally overseen the completion of this audit and have personally reviewed and verified the responses in the audit. I understand the importance of the broker's duty to exercise reasonable supervision and control in assuring compliance with the law and regulations, and have made every effort to comply.

I hereby declare and affirm all responses are true, full, complete and accurate to the best of my knowledge. I further understand any false, misleading or incomplete answers to this audit may result in disciplinary action.

Printed name _____

Signature _____ Date _____

THIS FORM SHALL BE KEPT AND MAINTAINED ON THE PREMISES OF THE FIRM OR SOLE PROPRIETORSHIP.
DO NOT RETURN THIS FORM TO THE REAL ESTATE BOARD.

ON-LINE ISSUES TO CONSIDER

On-Line Transactions, Electronic Documents, and Information Security Protections

The internet and cloud computing offer landlords and property managers opportunities for significant cost savings and efficiency in terms of processing time, physical storage, and access to data. Also as consumers are coming more technology savvy, many applicants and tenants prefer the convenience of on-line transactions. At the same time, landlords and property managers need to be aware of the ongoing legal risks associated with cyber security. Legal responsibilities can arise both from regulatory oversights and contractual relationships.

A significant number of landlords and property managers are moving many parts of the landlord-tenant relationship on-line, including for example rental applications, background checks, identity verification, lease documents, and on-line rental payments. In order to ensure compliance and mitigate exposure to legal liability, some issues landlords and property managers should consider prior to moving to on-line processes include:

- Landlords' rights to collect and use information, and the applicable consent requirements.
- The duty to protect information collected.
- Identity verification practices, including Knowledge Based Assessments (KBA).
- Requirements for destruction of information.
- Adoption of Privacy and Security Notice Policies, in accordance with applicable law, and best practices.
- Requirements for credit and debit card transactions, and the right to collect "checkout fees" and/or "convenience fees."
- The ability to use electronic applications, rental agreements, and electronic signatures.
- Digital versus digitized signatures.
- The legality of electronic records and paper printouts.
- Contracts with cloud vendors.

FutureLaw has a team of attorneys and consults who comprise its Digital Services Group, directed by Timothy Reiniger, specializing in these types of issues. For more information about how we might assist you with your on-line and other electronic issues, please contact us.

Prepared by Timothy S. Reiniger, Consultant

VIOLENCE AGAINST WOMEN ACT OF 2005

This Law expired on December 31, 2012. An extension, with some modifications to the existing law, was passed by the Senate on February 11, 2013. As of February 26, 2013, the House has not yet voted on the bill.

We received 29 comment letters in response to the February 11, 2013 Federal Register notice. These comment letters contained a total of approximately 200 recommendations, suggestions, and other comments. We have created a document that provides a summary of each comment and the corresponding Coast Guard response. A copy of this public comment matrix is available for viewing in the public docket for this notice. You may access the docket by going to *http://www.regulations.gov*, using "USCG–2012–1066" as your search term, and following the instructions in the ADDRESSES section above.

The basic ideas and principles encompassed in draft NVIC 02–13 remain. The Coast Guard has made some changes from the draft NVIC to the final version based on public comments. A brief discussion of the most important changes is included below. For a more in-depth discussion of the individual comments submitted, please visit the docket for this notice to view submitted comments and the public comment matrix.

(1) We received several comments urging us to incorporate "substantial equivalencies" so that vessels can demonstrate that they meet the requirements of the MLC via their compliance with equivalent U.S. laws, regulations and other measures. The Coast Guard agrees that the Convention authorizes the use of national laws or other measures conforming to the MLC requirements to demonstrate compliance with the standards of the Convention. We have amended the NVIC, where applicable, to include such equivalencies.

(2) Several commenters mentioned that the MLC definition of the term "seafarer" is very broad and can be unclear to a ship operator. For example, they stated that in the offshore mineral/energy sector, vessels host many types of personnel that are neither credentialed nor traditional mariners, and therefore, should not be covered by the MLC requirements. In response, we have added a separate definitions enclosure to NVIC 02–13, which provides guidance on the term "seafarer" consistent with ILO Resolution VII, *Concerning Information on Occupational Groups.*

(3) A number of commenters requested either clarification or deletion of the Job Aid enclosure we included with draft NVIC 02–13. Specifically, these commenters stated that the Job Aid unnecessarily duplicated other parts of the NVIC and did not adequately address equivalencies to meet MLC standards. After considering these comments, we have removed the Job Aid from NVIC 02–13.

(4) One commenter was concerned that the draft NVIC did not provide adequate guidance on how to meet the MLC standards for ships cook competency. To address this concern, we have provided a separate enclosure to the NVIC that clarifies MLC guidance on this issue.

(5) Commenters also raised concerns that the draft NVIC did not provide enough guidance regarding two issues: on board complaint procedures; and how to determine what types of activities would be considered hazardous to seafarers under the age of 18. To address these concerns, we have added separate enclosures that provide additional guidance on these issues.

NVIC 02–13 contains a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). This collection of information has been submitted to the Office of Management and Budget (OMB) for review in accordance with the PRA. An agency may not conduct a collection of information unless the collection of information displays a valid control number assigned by OMB. You do not need to respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information referenced in this notice, OMB would need to approve the Coast Guard's pending request to collect this information.

Authority

This notice is issued under authority of 33 U.S.C. 1221(c)(3) and 5 U.S.C. 552(a).

Dated: July 30, 2013.

Joseph A. Servidio,

Rear Admiral, U.S. Coast Guard, Assistant Commandant, Prevention Policy.

[FR Doc. 2013–18807 Filed 8–5–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5720–N–01]

The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice provides an overview of the applicability to HUD programs of the recently enacted Violence Against Women Reauthorization Act of 2013. The 2013 law expands the number of HUD programs subject to the statute's protections beyond HUD's public housing and section 8 tenant-based and project-based programs. This notice highlights the key changes made by this statute, lists the HUD programs now covered by this statute, provides an overview of key provisions applicable to HUD programs, and advises of HUD's plans to issue rules or guidance on this new law. This notice is not program guidance for any individual HUD program covered by the new law. HUD will issue guidance and/or rules, as may be applicable, for covered programs at a later date. This notice is issued to provide an overview of the Violence Against Women Reauthorization Act of 2013, and alert HUD's program participants to the provisions applicable to HUD programs.

In addition to providing an overview, this notice seeks comment from HUD program participants and other interested members of the public on certain issues. Comments received in response to this solicitation will aid HUD in developing additional guidance and regulations.

DATES: *Comment Due Date:* October 7, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the docket number and title above.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and

interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION: For information about: HUD's Public Housing program, contact Becky Primeaux, Director, Public Housing Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone number 202–402–6050; HUD's Housing Choice Voucher program (Section 8) contact Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202–402–2425; HUD's Multifamily Housing programs, contact Catherine M. Brennan, Director, Housing Assistance Policy Division, Office of Housing, telephone number 202–708–3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202–708–2684; HUD's Housing Opportunities for Persons With Aids (HOPWA) program, please contact William Rudy, Deputy Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, telephone number 202–708–1934; and HUD's Homeless programs, contact Ann Marie Oliva, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202–708–4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) (VAWA 2013). VAWA 2013 reauthorizes and amends the Violence Against Women Act of 1994, as previously amended, (title IV, sec. 40001–40703 of Pub. L. 103–322, 42 U.S.C. 13925 *et seq.*)[1] VAWA 2013, among other things, enhances judicial and law enforcement tools to combat violence against women; improves services for victims; enhances services, protection, and justice for young victims of violence; strengthens the health care system's response to violence against women; and expands protections for Native American women and immigrants. The provisions of VAWA 2013 that are applicable to HUD programs are found in title VI of VAWA 2013, which is entitled "Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking." Section 601 of VAWA 2013 amends subtitle N of VAWA (42 U.S.C. 14043e *et seq.*) to add a new chapter entitled "Housing Rights."

Section 4 of VAWA 2013, entitled "Effective Date," provides that "Except as otherwise specifically provided in this Act, the provisions of titles I, II, III, IV, VII, and sections 3, 602, 901, and 902 of this Act shall not take effect until the beginning of the fiscal year following the date of enactment of this Act." Section 601 of title VI, which addresses HUD programs, does not have a one-year delayed effective date. (Section 602 of title VI addresses a housing grants program administered by the Department of Justice.) While the provisions of section 601 are effective upon enactment, this does not mean that these provisions are self-executing (self-executing means no implementing or interpreting regulation is necessary to enable the regulated parties to comply with the new provisions). VAWA 2005 was largely self-executing because VAWA 2005 amended the authorizing statutes for HUD's public housing and tenant-based and project-based section 8 programs and, by working within the framework of those statutes, VAWA 2005 facilitated the ability for participants in HUD's public housing and section 8 programs to immediately comply with the VAWA 2005 provisions. VAWA 2013 did not amend the authorizing statutes for the newly covered HUD programs, and therefore additional guidance and rulemaking will be required to enable and facilitate compliance with the VAWA 2013 provisions.

HUD Statutes and Programs Affected by VAWA 2013. In addition to HUD's public housing and section 8 tenant-based and project-based rental assistance programs that were subject to VAWA, VAWA 2013 makes the following HUD programs subject to the VAWA protections:

- Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q)[2];
- Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013)[3];
- Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*);
- HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*); Homeless programs under title IV of the McKinney-Vento Homeless

[1] In this notice, the Violence Against Women Act of 1994, as amended over the years, is referred to solely as VAWA unless it is necessary or appropriate to refer to a specific reauthorization of VAWA. VAWA, established in 1994 as title IV of the Violent Crime Control and Law Enforcement Act of 1994, (Pub. L. 103–322, approved September 13, 1994), has been reauthorized in 2000 through Division B of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) and in 2005 through The Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162) (VAWA 2005). The references to "VAWA" in this notice include the amendments in 2000 and 2005, unless explicitly noted otherwise. The full text of the new law in pdf and plain text versions can be found, respectively, at *http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf*, and *http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/html/PLAW-113pu*

[2] It is HUD's view that VAWA 2013 does not cover Section 202 Direct Loan projects that are without project-based section 8 assistance. The statutory definition to "covered housing program" cites to the current section 202 (capital advance) authority. In cases where Congress seeks to make requirements applicable to the Section 202 Direct Loan projects, Congress would include language such as "section 202 of the Housing Act of 1959 as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990," as seen in the American Homeownership Economic Opportunity Act of 2000 (AHEO), as amended by the Section 202 Supportive Housing for the Elderly Act of 2010. Such language was not included in VAWA 2013. VAWA 2013 is also not applicable to section 202 when such assistance is coupled with Section 162 Assistance (Project Assistance Contracts). Additionally, VAWA 2013 is not applicable to the new Senior Preservation Rental Assistance Contracts.

[3] This includes the Capital Advance Program, as well as the section 811 Rental Assistance Program, as authorized under the Frank Melville Supportive Housing Investment Act.

Assistance Act (McKinney-Vento) (42 U.S.C. 11360 *et seq.*) [4];

• Federal Housing Administration (FHA) mortgage insurance for multifamily rental housing, under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate pursuant to section 221(d)(5) (such housing is eligible for FHA mortgage insurance for single-room occupancy pursuant to section 223(g) of the National Housing Act);

• FHA mortgage insurance for multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1); and

• HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) and tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f).

These HUD programs, together with rural housing assistance under certain sections of the Housing Act of 1949 and the low-income housing tax credit program under section 42 of the Internal Revenue Code, are referred to collectively in this notice, as "covered housing programs." In this notice, HUD refers to the HUD programs included in the covered housing programs as "HUD covered programs." Housing made available under the HUD covered programs will be referred to as "assisted housing" in this notice.

While VAWA 2013 provides protections for individuals on tribal lands, VAWA 2013 does not list housing assisted under HUD's Indian Housing programs in the list of HUD covered programs.

II. Pre-VAWA 2013 Requirements Compared to VAWA 2013 Requirements

Regulations pertaining to VAWA protections and rights and responsibilities are already in place, in 24 CFR part 5, subpart L, for HUD's public housing and section 8 tenant-based and project-based rental assistance (collectively, the section 8 program). VAWA 2005 [5] made VAWA protections applicable to HUD's public housing and section 8 programs. The VAWA 2013 amendments to sections 6 and 8 of the 1937 Act remove from these two sections of the 1937 Act certain provisions relating to admission, occupancy, and termination of assistance policies and rights and responsibilities of PHAs, owners, and managers as such policies and responsibilities relate to domestic violence, dating violence, and stalking; the documentation of these acts and confidentiality; and related definitions. These provisions are removed from the 1937 Act because, as discussed in more detail below, VAWA 2013 relocates these provisions to section 41441 of VAWA, which makes these provisions applicable to the programs added by VAWA 2013, and continues to make these provisions applicable to sections 6 and 8 of the 1937 Act. VAWA 2013 expands VAWA protections beyond sections 6 and 8 of the 1937 Act, but does not amend the authorizing statutes for the HUD covered programs. For purposes of clarity in this notice, the statutory requirements that were previously in place for sections 6 and 8 of the Housing Act of 1937 are referred to as "pre-VAWA 2013" requirements throughout this notice.

The following section provides a review of the pre-VAWA 2013 requirements and highlights the changes made by VAWA 2013. While rulemaking will be needed to conform HUD's existing VAWA regulations to the VAWA 2013 requirements and to establish VAWA regulations for the HUD programs newly covered by VAWA 2013, the following also identifies specific issues for which HUD seeks comment to inform HUD in the development of regulations or guidance, or both, as may be applicable.

A. Coverage for Victims of Sexual Assault

Pre-VAWA 2013: Absence of reference to victims of sexual assault in HUD covered programs. Although VAWA 2005 contained provisions for protection of victims of sexual assault (*see* 42 U.S.C. 14043e–1), reference to protection of victims of sexual assault was not part of the VAWA 2005 requirements applicable to HUD programs; that is, reference to victims of sexual assault was not included in the amendments to sections 6 and 8 of the 1937 Act. (See 42 U.S.C. 1437d(3) and 1437f(9) prior to amendment by VAWA 2013.) "Sexual assault" is defined as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA 2013: Coverage of victims of sexual assault in HUD covered programs. VAWA 2013 extends these protections to victims of sexual assault participating in HUD covered programs.

B. Admission, Occupancy, and Termination of Assistance Policies

Pre-VAWA 2013: The pre-VAWA 2013 requirements provided the following protections relating to admission, occupancy, and termination of assistance policies. The regulatory citation in parentheses that follows each protection provides where this protection, as applies to HUD's public housing and section 8 programs, is currently codified in HUD regulations:

• Being a victim of domestic violence, dating violence, or stalking, as these terms are defined in the law, is not a basis for denial of assistance or admission to assisted housing if the applicant otherwise qualifies for assistance or admission (addressed in 24 CFR 5.2005(b));

• Incidents or threats of domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or as "good cause" for termination of the assistance, tenancy, or occupancy rights of the victim (addressed in 24 CFR 5.2005(c)(1)); and

• Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate family member of the tenant is the victim (addressed in 24 CFR 5.2005(c)(2)).

VAWA 2013: The protections described above are also included in VAWA 2013 and apply to all HUD covered programs. In each of the protections described above, VAWA 2013 also adds sexual assault whenever the pre-VAWA 2013 language references "domestic violence, dating violence, or stalking."

Criminal activity. VAWA 2013 also expands protections relating to the prohibition of terminating assistance because of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking by replacing the term "immediate family member" with "affiliated individual." VAWA 2013 provides that criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or

[4] VAWA 2013 states that "the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*)" is a VAWA covered housing program. However, subtitle A of title IV does not include a program. Therefore, HUD submits that it was Congress's intent to include the programs found elsewhere in title IV, which include the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Assistance Stability program.

[5] See footnote 1.

occupancy rights if the tenant or an *affiliated individual* of the tenant is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking (emphasis added).

Affiliated individual. VAWA 2013 defines an "affiliated individual," with respect to an individual, as a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis, or any individual, tenant, or lawful occupant living in the household of that individual.

The 2011 Senate legislation for reauthorization of VAWA, the VAWA Reauthorization Act of 2011 (S. 1925), introduced the term "affiliated individual." The Senate Report accompanying that legislation (Senate Rpt. 112–153, March 12, 2012) explained the reason for the introduction of that term. The report stated in relevant part as follows: "[T]o better reflect the terminology used by the housing industry, the bill replaces the term 'immediate family member' with 'affiliated individual' in referring to other victims associated with the tenant who are protected under this provision." (Senate Rpt. 112–153, at page 13.[6])

C. Rights and Responsibilities of PHAs, Owners, and Managers

Pre-VAWA 2013: Noninterference with rights and responsibilities of PHAs, Owners, and Managers. Pre-VAWA 2013 requirements provided that the policies governing admission, occupancy, and termination of assistance are not to interfere with certain rights and responsibilities of public housing agencies (PHAs), owners, or managers[7] regarding criminal activity or acts of violence against family members or others.

Option to bifurcate lease. Specifically, pre-VAWA 2013 requirements provided that notwithstanding the restrictions placed on admission, occupancy, and termination of occupancy or assistance as discussed in preceding section B of this notice, or any Federal, State, or local law to the contrary, a PHA, owner, or manager of assisted housing may bifurcate a lease for housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing who engages in criminal acts of physical violence against family members or others without evicting, removing, terminating the assistance to, or otherwise penalizing a victim of such violence, who is a tenant or lawful occupant (addressed in 24 CFR 5.2009(a)).

VAWA 2013: Bifurcation of lease and opportunity to establish eligibility for remaining tenants. VAWA 2013 continues to allow for lease bifurcation, but changes the language regarding the violent acts ("criminal acts of physical violence against family members or others" becomes "criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual"), and mandates that if such bifurcation occurs, and the removed tenant or lawful occupant was the sole tenant eligible to receive assistance under a covered housing program, the PHA, owner, or manager shall provide any remaining tenant the opportunity to establish eligibility for the covered housing program.

If the remaining tenant cannot establish eligibility, the PHA, owner, or manager is required to provide the tenant a reasonable time to find new housing or to establish eligibility under another covered housing program. VAWA 2013 provides that the appropriate agency, in this case HUD, with respect to HUD covered programs, is to determine what constitutes a reasonable time.

HUD will provide through rulemaking or guidance, as may be applicable, what constitutes a reasonable time for remaining tenants to find new housing or establish eligibility under another HUD covered housing program.

Specific request for comment. HUD specifically solicits comment from HUD participants in HUD covered programs on that period that would be reasonable to find new housing or establish eligibility under another HUD covered housing program.

Pre-VAWA 2013: Restrictions on implementing VAWA protections. Pre-VAWA 2013 requirements also provided restrictions that the law places on implementing the VAWA protections, and carrying out the rights and responsibilities under VAWA, as discussed in section B. The regulatory citation in parentheses, which follows each limitation, provides where this limitation, as applies to HUD's public housing and section 8 programs, is currently codified in HUD regulations. Pre-VAWA 2013 requirements provided that VAWA:

- May not be construed to limit a PHA, owner, or manager from honoring various court orders issued to either protect the victim or address the distribution of property in case a household breaks up (addressed in 24 CFR 5.2009(b));
- Does not limit any otherwise available authority of a PHA, owner, or manager to terminate assistance or evict due to any lease violation unrelated to domestic violence, dating violence, or stalking, provided that the owner or manager does not subject a tenant to a more demanding standard than other tenants in determining whether to evict or terminate assistance (addressed in 24 CFR 5.2005(d)(1));
- May not be construed to limit the authority of a PHA, owner, or manager to terminate the assistance of, or evict, any occupant who can be demonstrated to pose an actual and imminent threat to other tenants or the property's employees (addressed in 24 CFR 5.2005(d)(2)); and
- Shall not be construed to supersede any provisions of Federal, State, or local laws that provide greater protection for victims of domestic violence, dating violence, or stalking (addressed in 24 CFR 5.2011).

VAWA 2013: VAWA 2013 extends these restrictions to all HUD covered programs. Additionally, PHAs, owners, and managers must immediately include victims of sexual assault in the provision currently described at 24 CFR 5.2005(d)(1). HUD notes that VAWA 2013 does not include victims of sexual assault in this provision, but as this is inconsistent with other changes in the law, HUD believes that the absence of sexual assault in this provision was an oversight in the drafting of the statute, rather than congressional intent to exclude victims of sexual assault from this provision.

D. Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Confidentiality

Pre-VAWA 2013: Documentation requirements. Pre-VAWA 2013 requirements allowed a PHA, owner, or manager of assisted housing to request documentation that an applicant or tenant is a victim of domestic violence, dating violence, or stalking if the applicant or tenant seeks and requests the protections of VAWA previously discussed in this notice (addressed in 24 CFR 5.2007(a)). However, VAWA did not require a PHA, owner, or manager of assisted housing to request this information (addressed in 24 CFR 5.2007(d)). If a tenant or applicant does not provide this documentation after it is requested by the PHA, owner, or manager, then the PHA, owner, or manager may evict or terminate assistance of the tenant or a family member, for violations of the lease or family obligations that otherwise would

[6] See *http://www.gpo.gov/fdsys/pkg/CRPT-112srpt153/pdf/CRPT-112srpt153.pdf.*

[7] Please note that in HUD's housing programs the term "manager" as used in VAWA 2013 is synonymous with the phrase "management agent."

constitute good cause to evict or grounds for termination (addressed in 24 CFR 5.2007(c)).

Acceptable forms of documentation include the following (the regulatory citation in parentheses that follows each form of documentation, as applies to HUD's public housing and section 8 programs, provides where this documentation is currently codified in HUD regulations):

- A certification form approved by HUD that states that an applicant or tenant is a victim of domestic violence, dating violence, or stalking, the incident of domestic violence, dating violence, sexual assault, or stalking that requires protection, and the name of the perpetrator (addressed in 24 CFR 5.2007(b)(1) and the HUD-approved forms are HUD–50066 and HUD–91066 [8]);
- A document that is signed by the applicant or tenant and an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the applicant or tenant has sought assistance relating to domestic violence, dating violence, or stalking, or the effects of abuse, in which the professional states, under penalty of perjury, that he or she believes that the abuse meets the requirements found in VAWA (addressed in 24 CFR 5.2007(b)(3));
- A Federal, State, tribal, territorial, or local police report or court record (addressed in 24 CFR 5.2007(b)(2)); or
- A statement or other evidence provided by an applicant or tenant, at the discretion of the PHA, owner, or manager (addressed in 24 CFR 5.2007(d)).

The applicant or tenant must provide the documentation within 14 business days after the date that the applicant or tenant receives a request in writing for such documentation, though the PHA, owner, or manager of assisted housing may extend the 14-day deadline at his or her discretion (addressed in 24 CFR 5.2007(a)).

Confidentiality requirements. Pre-VAWA 2013 requirements mandated that any information submitted to a PHA, owner, or manager regarding domestic violence, dating violence, or stalking, including the fact that the individual is a victim of such abuse, be kept confidential and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is requested or consented to by the individual in writing, required for use in an eviction proceeding, or otherwise required by applicable law (addressed in 24 CFR 5.2007(b)(4)). If a PHA, manager, or owner receives documentation that contains conflicting information, the PHA, owner, or manager may require an applicant or tenant to submit third-party documentation (addressed in 24 CFR 5.2007(e)).

VAWA 2013: Documentation and confidentiality requirements. VAWA 2013 extends the documentation and confidentiality provisions found in the existing VAWA requirements to all HUD covered programs. VAWA 2013, as did VAWA, requires a certification form approved by the appropriate agency, which is HUD for the HUD covered programs.

Development of forms for new HUD covered programs. HUD will develop forms, similar to forms HUD–50066 and HUD–91066 for the newly covered HUD programs.

Specific request for comment. HUD specifically solicits comment on how these forms may be adapted for the newly covered HUD programs.

Increased confidentiality and statement of mental health professional. Changes made by VAWA 2013 to the documentation and confidentiality requirements currently reflected at 24 CFR, part 5, subpart L are as follows:

- Sexual assault is added to the list of domestic violence, dating violence, or stalking;
- The victim of domestic violence, dating violence, sexual assault, or stalking is required to provide the name of the perpetrator on the HUD-approved certification form only if the name of the perpetrator is safe to provide and is known to the victim;
- An acceptable form of documentation includes a document that is signed by the applicant or tenant and a mental health professional from whom the applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of such actions, and states, under penalty of perjury, that the mental health professional believes that the domestic violence, dating violence, sexual assault, or stalking meets the requirements found in VAWA 2013; and
- An acceptable form of documentation includes a record of an administrative agency.

Modification to existing forms. HUD will modify existing forms, HUD–50066 and HUD–91066, to ensure that the forms reflect an obligation on the part of the victim to provide the name of the perpetrator only if it is safe to provide and if it is known to the victim. HUD will also modify its existing forms to reflect the additional acceptable forms of documentation that the victim may submit; for example, a document signed by the tenant, or a mental health professional or an administrative agency record. In addition, HUD will modify its forms to cover victims of sexual assault.

E. No superseding of greater protections

Pre-VAWA 2013: VAWA provides that protections provided by VAWA do not supersede any provision of any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking (addressed in 24 CFR 5.2011).

VAWA 2013: VAWA 2013 expands this provision to all covered housing programs and adds sexual assault to the list of domestic violence, dating violence, or stalking.

F. Notification

Pre-VAWA 2013: Notification of VAWA protections. Pre-VAWA 2013 requirements obligated each PHA, owner, and manager of assisted housing to provide notice to tenants of their VAWA rights, including the right to confidentiality and the limits thereof (addressed in 24 CFR 5.2005(a))(1) and 5.2005(a)(3)). Additionally, pre-VAWA 2013 requirements obligated each PHA to provide notice to owners and managers of assisted housing of their rights and obligations under VAWA (addressed in 24 CFR 5.2005(a)(2)).

VAWA 2013: Enhanced notification of VAWA protections. VAWA 2013 extends the requirements addressed at 24 CFR 5.2005(a)(1) and 5.2005(a)(3) to all covered HUD programs, but requires that HUD, as opposed to the individual housing provider, develop the notice outlining the applicant or tenant's rights. VAWA 2013 removes the statutory requirement addressed at 24 CFR 5.2005(a)(2), but this requirement is still in effect (via HUD's regulation) for the section 8 program. Additionally, VAWA 2013 requires that the notice be provided together with the certification form discussed in section D of this notice. VAWA 2013 also requires notice to be provided at the time the applicant is denied residency in a dwelling unit, at the time the individual is admitted to a dwelling unit, with any notification of eviction or notification of termination of assistance, and in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban

[8] The HUD-approved certification form, HUD–50066, is used by the HUD covered programs administered by HUD's Office of Public and Indian Housing. The HUD-approved certification form, HUD–91066, is used by the HUD covered programs administered by HUD's Office of Multifamily Housing, Office of Housing. These forms are available at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/.*

Development in accordance with Executive Order 13166.

Development of Notice of Rights. HUD is developing the notice of rights, which will be issued first for comment under the Paperwork Reduction Act.

Specific request for comment. HUD specifically solicits comment, in advance of issuance of a notice for comment under the Paperwork Reduction Act, on the content of the notice of tenant's rights.

G. Emergency Transfers—New Provisions in VAWA 2013

VAWA 2013 adds increased protection for victims of abuse by requiring HUD to adopt a model emergency transfer plan for use by PHAs, owners, managers or other housing providers participating in HUD covered programs. The model plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling under a covered housing program and must incorporate reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the new dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. The tenant can be granted a transfer only if the tenant requests a transfer, and either the tenant reasonably believes he or she is threatened with imminent harm from further violence if he or she remains in the unit or, if the tenant is a sexual assault victim, the sexual assault occurred on the premises during the 90-day period preceding the transfer request. Any transfer is subject to the availability of other assisted housing and subject to all other HUD requirements being met.

In addition, VAWA 2013 requires HUD to establish policies and procedures under which victims of abuse requesting an emergency transfer may receive, subject to the availability of tenant protection vouchers, assistance through the tenant-based section 8 program.

Specific Request for Comment. HUD specifically requests comments on the content of the model emergency transfer plan and the implementation of the tenant protection vouchers provision.

III. Complying with VAWA 2013 Requirements

As noted earlier in this notice, HUD will undertake rulemaking to conform its existing VAWA regulations, currently applicable to public housing and section 8 programs, to the new statutory language and requirements, and to put in place VAWA regulations for all the HUD covered programs.

HUD's Public Housing and Section 8 Programs. Since HUD's public housing and section 8 programs already have VAWA regulations in place, compliance with the VAWA 2013 requirements will be easier for PHAs, owners, and managers participating in these programs. With the exception of emergency transfer plans and the determination of what is a "reasonable time" for a victim to find new housing or establish eligibility for another HUD program after the abuser (a person that commits an act of domestic violence, dating violence, sexual assault, or stalking) has been removed from the program, PHAs, owners, or managers administering public or section 8 housing will continue to provide VAWA protections as provided in 24 CFR part 5, subpart L, as those protections are enhanced by VAWA 2013. Before such time that HUD develops the model Emergency Transfer Plan, PHAs, owners, or managers may continue to implement any transfer plan at that property/program as described in an agency's admissions and occupancy plan or administrative plan.

New HUD Covered Programs. For those HUD covered programs that were not previously required to offer VAWA protections, HUD recognizes that full compliance with VAWA 2013 may be challenging at this time. Although all housing providers in HUD covered programs are concerned with the safety of their tenants and strive to ensure that tenants feel safe in their housing and the neighborhood in which the housing is located, HUD recognizes the challenge for maintaining safety that is presented by domestic violence since the threat to safety is generally in the tenant's own household, and the overall shortage of available affordable housing can complicate the ability to immediately transfer victims of domestic violence to other housing. The complications may be eased somewhat as a result of protections for victims of domestic violence provided by State and local laws.[9] Having these types of laws in place across the Nation may help to facilitate compliance with VAWA 2013.

Guidance to be issued for new HUD covered programs. Recognizing the challenges facing participants in the new HUD covered programs that are now subject to VAWA requirements, HUD will be issuing administrative guidance to help programs comply with VAWA 2013, in addition to promulgating regulations.

IV. Solicitation of Comment

In this notice, HUD has highlighted certain issues for which comment is specifically sought, but welcomes comment on any aspect of this notice.

Dated: July 31, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–18920 Filed 8–5–13; 8:45 am]

BILLING CODE 4210–67–P

[9] See compendium of State and local laws that affect domestic violence survivors' housing rights compiled by the National Housing Law Project at http://nhlp.org/[illegible]tic%20violence%20housing%20co.- 236 -[illegible]20FINAL7.pdf

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N162; FXES11130400000C2–134–FF040E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final recovery plan for the endangered Alabama sturgeon. The final plan includes specific recovery objectives and criteria to be met in order to downlist the species to threatened under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: You may obtain a copy of the recovery plan by contacting Jeff Powell at the Daphne Field Office, by U.S. mail at U.S. Fish and Wildlife Service, Alabama Field Office, 1208–B Main Street, Daphne, AL 36532, or by telephone at 251–441–5858. Alternatively, you may visit the Fish and Wildlife Service's recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans* or the Daphne Field Office Web site at *http://www.fws.gov/daphne/* to obtain a copy.

FOR FURTHER INFORMATION CONTACT: Jeff Powell, at the above addresses or by telephone at 251–441–5858.

SUPPLEMENTARY INFORMATION:

Background

We listed the Alabama sturgeon (*Scaphirhyncus suttkusi*) as an endangered species under the Act (16 U.S.C. 1531 *et seq.*) on May 5, 2000 (65 FR 26438) and designated critical habitat for the species on June 2, 2009 (74 FR 26488). The species' historic range encompassed all major rivers in the Mobile Basin, below the Fall Line

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

April 4, 2016

Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.[1] HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

II. Background

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.[2] The United States prison population of 2.2 million adults is by far the largest in the world.[3] As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.[4] Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons,[5] and over 95 percent of current inmates will be released at some point.[6] When individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.[7] Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing, including public and other federally-subsidized housing,

[1] 42 U.S.C. § 3601 *et seq.*
[2] Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), *available at* https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf.
[3] Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 2 (Jeremy Travis, et al. eds., 2014), *available at:* http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.
[4] *Id.*
[5] E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387.
[6] Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, *available at* http://www.bjs.gov/content/pub/pdf/reentry.pdf.
[7] *See, e.g.*, S. Metraux, et al. "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research, #9* (D. Dennis, et al. eds., 2007), *available at:* https://www.huduser.gov/portal//publications/pdf/p9.pdf (explaining "how the increasing numbers of people leaving carceral institutions face an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.").

because of their criminal history. In some cases, even individuals who were arrested but not convicted face difficulty in securing housing based on their prior arrest.

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.[8] 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).[9] 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).

III. Discriminatory Effects Liability and Use of Criminal History to Make Housing Decisions

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.[10] Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. 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.[11] Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.[12]

The following sections discuss the three steps used to analyze claims that a housing provider's use of criminal history to deny housing opportunities results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

---

[8] *See infra* nn. 16-20 and accompanying text.

[9] The Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status, and national origin. This memorandum focuses on race and national origin discrimination, although criminal history policies may result in discrimination against other protected classes.

[10] 24 C.F.R. § 100.500; *accord Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507 (2015).

[11] 24 C.F.R. § 100.500; *see also Inclusive Cmtys. Project*, 135 S. Ct. at 2514-15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500); *id*. at 2523 (explaining that housing providers may maintain a policy that causes a disparate impact "if they can prove [the policy] is necessary to achieve a valid interest.").

[12] *See* 24 C.F.R. § 100.500.

A. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect

In the first step of the analysis, a plaintiff (or HUD in an administrative adjudication) must prove that the criminal history policy has a discriminatory effect, that is, that the policy results in a disparate impact on a group of persons because of their race or national origin.[13] This burden is satisfied by presenting evidence proving that the challenged practice actually or predictably results in a disparate impact.

Whether national or local statistical evidence should be used to evaluate a discriminatory effects claim at the first step of the analysis depends on the nature of the claim alleged and the facts of that case. While state or local statistics should be presented where available and appropriate based on a housing provider's market area or other facts particular to a given case, national statistics on racial and ethnic disparities in the criminal justice system may be used where, for example, state or local statistics are not readily available and there is no reason to believe they would differ markedly from the national statistics.[14]

National statistics provide grounds for HUD to investigate complaints challenging criminal history policies.[15] Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration. For example, in 2013, African Americans were arrested at a rate more than double their proportion of the general population.[16] Moreover, in 2014, African Americans comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.[17] In other words, African Americans were incarcerated at a rate nearly three times their proportion of the general population. Hispanics were similarly incarcerated at a rate disproportionate to their share of the

[13] 24 C.F.R. § 100.500(c)(1); *accord Inclusive Cmtys. Project*, 135 S. Ct. at 2522-23. A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. *See* 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

[14] *Compare Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) ("[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.") *with Mountain Side Mobile Estates P'ship v. Sec'y of Hous. & Urban Dev.,* 56 F.3d 1243, 1253 (10th Cir. 1995) ("In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.") (citation omitted).

[15] *Cf. El v. SEPTA*, 418 F. Supp. 2d 659, 668-69 (E.D. Pa. 2005) (finding that plaintiff proved prima facie case of disparate impact under Title VII based on national data from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S., which showed that non-Whites were substantially more likely than Whites to have a conviction), *aff'd on other grounds,* 479 F.2d 232 (3d Cir. 2007).

[16] *See* FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, *available at* https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-43 (Fall 2014) (reporting that African Americans comprised 28.3% of all arrestees in 2013); U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2013 to December 1, 2013, *available a*t http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html (reporting data showing that individuals identifying as African American or Black alone made up only 12.4% of the total U.S. population at 2013 year-end).

[17] *See* E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387; and U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014, *available at* http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html.

general population, with Hispanic individuals comprising approximately 22 percent of the prison population, but only about 17 percent of the total U.S. population.[18] In contrast, non-Hispanic Whites comprised approximately 62 percent of the total U.S. population but only about 34 percent of the prison population in 2014.[19] Across all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males, it is over twice that for non-Hispanic White males.[20]

Additional evidence, such as applicant data, tenant files, census demographic data and localized criminal justice data, may be relevant in determining whether local statistics are consistent with national statistics and whether there is reasonable cause to believe that the challenged policy or practice causes a disparate impact. Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.

Regardless of the data used, determining whether a policy or practice results in a disparate impact is ultimately a fact-specific and case-specific inquiry.

B. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.[21] The interest proffered by the housing provider may not be hypothetical or speculative, meaning the housing provider must be able to provide evidence proving both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy and that the challenged policy actually achieves that interest.[22]

Although the specific interest(s) that underlie a criminal history policy or practice will no doubt vary from case to case, some landlords and property managers have asserted the protection of other residents and their property as the reason for such policies or practices.[23] Ensuring

[18] *See id.*
[19] *See id.*
[20] E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at table 10, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387.
[21] 24 C.F.R. § 100.500(c)(2); *see also Inclusive Cmtys. Project*, 135 S. Ct. at 2523.
[22] *See* 24 C.F.R. § 100.500(b)(2); *see also* 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013).
[23] *See, e.g.*, Answer to Amended Complaint at 58, *The Fortune Society, Inc. v. Sandcastle Towers Hsg. Dev. Fund Corp.*, No. 1:14-CV-6410 (E.D.N.Y. May 21, 2015), ECF No. 37 ("The use of criminal records searches as part of the overall tenant screening process used at Sand Castle serves valid business and security functions of protecting tenants and the property from former convicted criminals."); *Evans v. UDR, Inc.*, 644 F.Supp.2d 675, 683 (E.D.N.C. 2009) (noting, based on affidavit of property owner, that "[t]he policy [against renting to individuals with criminal histories is] based primarily on the concern that individuals with criminal histories are more likely than others to commit crimes on the property than those without such backgrounds … [and] is thus based [on] concerns for the safety of other residents of the apartment complex and their property."); *see also* J. Helfgott, *Ex-Offender Needs Versus Community Opportunity in Seattle*, Washington, 61 Fed. Probation 12, 20 (1997) (finding in a survey of 196

resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate, assuming they are the actual reasons for the policy or practice.[24] A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

1. Exclusions Because of Prior Arrest

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.[25] As the Supreme Court has recognized, "[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense."[26] Because arrest records do not constitute proof of past unlawful conduct and are often incomplete (*e.g.*, by failing to indicate whether the individual was prosecuted, convicted, or acquitted),[27] the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual. For that reason, a housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.

---

landlords in Seattle that of the 43% of landlords that said they were inclined to reject applicants with a criminal history, the primary reason for their inclination was protection and safety of community).

[24] As explained in HUD's 2013 Discriminatory Effects Final Rule, a "substantial" interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an interest be "legitimate" means that a housing provider's justification must be genuine and not false or fabricated. *See* 78 Fed. Reg. at 11470; *see also Charleston Hous. Auth. v. U.S. Dep't of Agric.*, 419 F.3d 729, 742 (8th Cir. 2005) (recognizing that, "in the abstract, a reduction in the concentration of low income housing is a legitimate goal," but concluding "that the Housing Authority had not shown a need for deconcentration in this instance, and in fact, had falsely represented the density [of low income housing] at the location in question in an attempt to do so").

[25] HUD recently clarified that arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants from public and other federally-assisted housing. *See* Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, HUD PIH Notice 2015-19, (November 2, 2015), available at: http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf.

[26] *Schware v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); *see also United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009) ("[A] bare arrest record – without more – does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity."); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) ("[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.").

[27] *See, e.g.*, U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), *available at* http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and "the most comprehensive single source of criminal history information in the United States," is "still missing final disposition information for approximately 50 percent of its records").

Analogously, in the employment context, the Equal Employment Opportunity Commission has explained that barring applicants from employment on the basis of arrests not resulting in conviction is not consistent with business necessity under Title VII because the fact of an arrest does not establish that criminal conduct occurred.[28]

2. Exclusions Because of Prior Conviction

In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct.[29] But housing providers that apply a policy or practice that excludes persons with prior convictions must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden. One federal court of appeals held that such a blanket ban violated Title VII, stating that it "could not conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed."[30] Although the defendant-employer in that case had proffered a number of theft and safety-related justifications for the policy, the court rejected such justifications as "not empirically validated."[31]

A housing provider with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary to serve a "substantial, legitimate, nondiscriminatory interest." To do this, a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.[32]

---

[28] *See* U.S. Equal Emp't Opportunity Comm'n, *EEOC Enforcement Guidance*, *Number 915.002*, 12 (Apr. 25, 2012), *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm*; see also Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that defendant employer's policy of excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII because there "was no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less honestly than other employees," such that "information concerning a … record of arrests without conviction, is irrelevant to [an applicant's] suitability or qualification for employment"), *aff'd*, 472 F.2d 631 (9th Cir. 1972).

[29] There may, however, be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor. *See generally* SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2005), *available at* http://www.search.org/files/pdf/RNTFCSCJRI.pdf.

[30] *Green v. Missouri Pacific R.R.*, 523 F.2d 1290, 1298 (8th Cir. 1975).

[31] *Id.*

[32] *Cf. El*, 479 F.3d at 245-46 (stating that "Title VII … require[s] that the [criminal conviction] policy under review accurately distinguish[es] between applicants that pose an unacceptable level or risk and those that do not").

A policy or practice that fails to take into account the nature and severity of an individual's conviction is unlikely to satisfy this standard.[33] Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard, especially in light of criminological research showing that, over time, the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense. [34]

Accordingly, a policy or practice that fails to consider the nature, severity, and recency of criminal conduct is unlikely to be proven necessary to serve a "substantial, legitimate, nondiscriminatory interest" of the provider. The determination of whether any particular criminal history-based restriction on housing satisfies step two of the discriminatory effects standard must be made on a case-by-case basis.[35]

C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a housing provider successfully proves that its criminal history policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest. In the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another practice that has a less discriminatory effect.[36]

Although the identification of a less discriminatory alternative will depend on the particulars of the criminal history policy or practice under challenge, individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.

---

[33] *Cf. Green*, 523 F.2d at 1298 (holding that racially disproportionate denial of employment opportunities based on criminal conduct that "does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden" and violated Title VII).

[34] *Cf. El*, 479 F.3d at 247 (noting that plaintiff's Title VII disparate impact claim might have survived summary judgment had plaintiff presented evidence that "there is a time at which a former criminal is no longer any more likely to recidivate than the average person…."); *see also Green*, 523 F.2d at 1298 (permanent exclusion from employment based on any and all offenses violated Title VII); *see* Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 Criminology and Pub. Pol'y 483 (2006) (reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record).

[35] The liability standards and principles discussed throughout this guidance would apply to HUD-assisted housing providers just as they would to any other housing provider covered by the Fair Housing Act. *See* HUD PIH Notice 2015-19 *supra* n. 25. Section 6 of that Notice addresses civil rights requirements.

[36] 24 C.F.R. § 100.500(c)(3); *accord Inclusive Cmtys. Project*, 135 S. Ct. 2507.

D. Statutory Exemption from Fair Housing Act Liability for Exclusion Because of Illegal Manufacture or Distribution of a Controlled Substance

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit "conduct against a person because such person has been convicted … of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)."[37] Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

Limitation. Section 807(b)(4) only applies to disparate impact claims based on the denial of housing due to the person's *conviction* for drug manufacturing or distribution; it does not provide a defense to disparate impact claims alleging that a policy or practice denies housing because of the person's *arrest* for such offenses. Similarly, the exemption is limited to disparate impact claims based on drug *manufacturing or distribution* convictions, and does not provide a defense to disparate impact claims based on other drug-related convictions, such as the denial of housing due to a person's conviction for drug *possession*.

IV. Intentional Discrimination and Use of Criminal History

A housing provider may also violate the Fair Housing Act if the housing provider intentionally discriminates in using criminal history information. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider's use of criminal records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria.

For example, intentional discrimination in violation of the Act may be proven based on evidence that a housing provider rejected an Hispanic applicant based on his criminal record, but admitted a non-Hispanic White applicant with a comparable criminal record. Similarly, if a housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for Whites but not African Americans, intentional discrimination exists.[38] A disparate treatment violation may also be proven based on evidence that a leasing agent assisted a White applicant seeking to secure approval of his rental application despite his potentially disqualifying criminal record under the housing provider's screening policy, but did not provide such assistance to an African American applicant.[39]

---

[37] 42 U.S.C. § 3607(b)(4).

[38] *Cf. Sherman Ave. Tenants' Assn. v. District of Columbia*, 444 F.3d 673, 683-84 (D.C. Cir. 2006) (upholding plaintiff's disparate treatment claim based on evidence that defendant had not enforced its housing code as aggressively against comparable non-Hispanic neighborhoods as it did in plaintiff's disproportionately Hispanic neighborhood).

[39] *See, e.g., Muriello*, 217 F. 3d at 522 (holding that Plaintiff's allegations that his application for federal housing assistance and the alleged existence of a potentially disqualifying prior criminal record was handled differently than those of two similarly situated white applicants presented a prima facie case that he was discriminated against because of race, in violation of the Fair Housing Act).

Discrimination may also occur before an individual applies for housing. For example, intentional discrimination may be proven based on evidence that, when responding to inquiries from prospective applicants, a property manager told an African American individual that her criminal record would disqualify her from renting an apartment, but did not similarly discourage a White individual with a comparable criminal record from applying.

If overt, direct evidence of discrimination does not exist, the traditional burden-shifting method of establishing intentional discrimination applies to complaints alleging discriminatory intent in the use of criminal history information.[40] First, the evidence must establish a prima facie case of disparate treatment. This may be shown in a refusal to rent case, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) the plaintiff or complainant applied for a dwelling from the housing provider; (3) the housing provider rejected the plaintiff or complainant because of his or her criminal history; and (4) the housing provider offered housing to a similarly-situated applicant not of the plaintiff or complainant's protected class, but with a comparable criminal record. It is then the housing provider's burden to offer "evidence of a legitimate, nondiscriminatory reason for the adverse housing decision."[41] A housing provider's nondiscriminatory reason for the challenged decision must be clear, reasonably specific, and supported by admissible evidence.[42] Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.[43]

While a criminal record can constitute a legitimate, nondiscriminatory reason for a refusal to rent or other adverse action by a housing provider, a plaintiff or HUD may still prevail by showing that the criminal record was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination. For example, the fact that a housing provider acted upon comparable criminal history information differently for one or more individuals of a different protected class than the plaintiff or complainant is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy. Or pretext may be shown where a housing provider did not actually know of an applicant's criminal record at the time of the alleged discrimination. Additionally, shifting or inconsistent explanations offered by a housing provider for the denial of an application may also provide evidence of pretext. Ultimately, the evidence that may be offered to show that the plaintiff or complainant's criminal history was merely a pretextual

---

[40] *See, generally, McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating the concept of a "prima facie case" of intentional discrimination under Title VII); s*ee, e.g., Allen v. Muriello*, 217 F. 3rd 517, 520-22 (7th Cir. 2000) (applying prima facie case analysis to claim under the Fair Housing Act alleging disparate treatment because of race in housing provider's use of criminal records to deny housing).

[41] *Lindsay v. Yates*, 578 F.3d 407, 415 (6th Cir. 2009) (quotations and citations omitted).

[42] *See, e.g., Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1039-40 (2d Cir. 1979) ("A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.").

[43] *See, e.g., Muriello*, 217 F.3d at 522 (noting that housing provider's "rather dubious explanation for the differing treatment" of African American and White applicants' criminal records "puts the issue of pretext in the lap of a trier of fact"); *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) ("In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups [because] 'clever men may easily conceal their [discriminatory] motivations.'" (quoting *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1185 (8th Cir. 1974)).

justification for intentional discrimination by the housing provider will depend on the facts of a particular case.

The section 807(b)(4) exemption discussed in Section III.D., above, does not apply to claims of intentional discrimination because by definition, the challenged conduct in intentional discrimination cases is taken because of race, national origin, or another protected characteristic, and not because of the drug conviction. For example, the section 807(b)(4) exemption would not provide a defense to a claim of intentional discrimination where the evidence shows that a housing provider rejects only African American applicants with convictions for distribution of a controlled substance, while admitting White applicants with such convictions.

V. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

Helen R. Kanovsky, General Counsel