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PROGRESS INTERRUPTED: VIRGINIA'S HESITANT MOVEMENT TO LANDLORD-TENANT REFORM

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ABSTRACT

In 2018, Virginia’s eviction crisis received national attention. Over the next three legislative sessions in 2019, 2020, and 2021, more than two dozen laws were enacted—a few on a temporary basis but most on a permanent basis—to be more fair, favorable, and friendly to tenants. The COVID-19 pandemic resulted in the Virginia Governor declaring a State of Emergency on March 12, 2020—the final day of the Regular Session of the Virginia General Assembly. The pandemic added urgency to an already accelerating movement toward landlord-tenant reform which had mustered bipartisan support. That progress dramatically halted in the 2022 Regular Session of the Virginia General Assembly with the defeat of at least five landlord-tenant bills intended to rectify the imbalance between the rights of tenants and landlords. Although some see that as a desired return to normalcy, others see that as a “normal” that Virginia should not want to go back to.

INTRODUCTION: WHY EVICTION MATTERS

No problem in Virginia affects more people, more seriously, in more areas of their lives, than evictions. Prior to the COVID-19 pandemic, each year from 2011 through 2016 an average of 145,414 residential eviction lawsuits—known as Summons for Unlawful Detainer—were filed in Virginia courts, almost exclusively in the General District Courts.¹ Most of these tenants were families with children, who are twice as likely to be evicted as families without children.² Most of them were people of color, since living in a mainly black or brown neighborhood makes eviction more likely than any other factor—more so than median property value, percent of rent burdened tenants, poverty rate, percent of tenant-occupied units, median rent, or median household income.³

Eviction is not just one problem; it is a dozen problems. It affects whether people have access to banks and credit, where children go to school, where

¹ Among large U.S. cities, Virginia had the second, third, fourth, sixth and tenth highest eviction rates in the country. Among mid-sized U.S. cities, Virginia had the second, fourth, and fifth highest eviction rates in the country. Emily Badger & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>.

² Chris Salviati, *Rental Insecurity: The Threat of Evictions to America’s Renters*, APARTMENT LIST BLOG (Oct. 20, 2017), <https://www.apartmentlist.com/research/rental-insecurity-the-threat-of-evictions-to-americas-renters>.

³ Virginia Commonwealth University’s RVA Eviction Lab ran numerous regression analyses of data and determined that neighborhood racial composition is a significant factor in determining eviction rates, even after controlling for income, property value, and other characteristics. Benjamin F. Teresa, *The Geography of Eviction in Richmond: Beyond Poverty*, RVA EVICTION LAB, 2018, at 1, <https://cura.vcu.edu/media/cura/pdfs/cura-documents/GeographiesofEviction.pdf>.

their parents can get jobs, buy food, get health care, access public transportation, and whether they live in a safe or crime-ridden area. The stress of eviction makes it a mental health issue. Evictions are expensive for landlords, because by the time they get to court, they have usually gone without rent for at least a month.⁴ If the tenant is evicted, it can take several months before landlords find and screen a new tenant.⁵

Problems created by evictions affect all of society. There is a real cost to communities, including the actual cost to landlords and sheriffs' departments to carry out evictions and the hidden costs to service providers and local governments who must deal with the aftermath.⁶ Focusing on the four years from 2018 to 2022, this article explores the causes of Virginia's eviction crisis, the landlord-tenant reforms enacted from 2019 to 2021, the bills stalled in 2022, and needed reforms which remain to be enacted.

I. LANDLORD-TENANT REFORM BEGAN WITH A MEDIA SPOTLIGHT AND BIPARTISANSHIP

On April 8, 2018, Virginia made the front page of the Sunday New York Times for having five of the highest ten eviction rates among large U.S. cities and three of the highest five eviction rates among medium size U.S. cities.⁷ The eviction rate measures the number of eviction judgments as a percentage of the number of tenant households.⁸ Among large U.S. cities (population 100,000 or more), Richmond had the second highest eviction rate at 11.44%, Hampton at 10.49% with the third highest, Newport News at 10.23% at the fourth highest, Norfolk at 8.65% at the sixth highest, and Chesapeake at 7.9% at the tenth highest. Among mid-size U.S. cities (population 20,000 to 99,999), Petersburg had the second highest eviction rate at 17.56%, followed by Hopewell at 15.68% at the fourth highest, and Portsmouth at 15.07% at

⁴ Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & COMMUNITY 638, 656 (2019).

⁵ *Id.* at 642.

⁶ RVA Eviction Lab estimated the total annual costs of responding to eviction in Virginia for providing healthcare, emergency shelter, foster care, and juvenile detention ranged from approximately \$484 million to \$1.3 billion. Chesley DeLeon et al., *The Public Cost of Eviction in Richmond and Virginia: Response Versus Prevention*, RVA EVICTION LAB, (July 2021), at 7, https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2021/07/CostofEvictions_Final.pdf (estimating the total annual costs of responding to eviction in Virginia for providing healthcare, emergency shelter, foster care, and juvenile detention ranged from approximately \$484 million to \$1.3 billion).

⁷ Badger & Bui, *supra* note 1.

⁸ VIRGINIA DEP'T OF HOUS. AND CMTY. DEV., ADDRESSING EVICTIONS BEFORE, DURING, AND AFTER COVID-19 5 (2021), <https://dhcd.virginia.gov/sites/default/files/Docx/verp/evictions-report.pdf>.

the fifth highest.⁹ To put these rates in context, they are 1.5 to 3.4 times higher than the statewide average eviction rate of 5.12%, and 2.8 to 6.3 times higher than the national eviction rate of 2.78%.¹⁰

No one reason made Virginia “Ground Zero” for the eviction crisis. Virginia was home to virtually every factor that would cause eviction rates to increase and virtually no factor which would cause eviction rates to decrease. Many of these factors were long standing societal problems, often decades in the making.

A. Affordable Housing Shortage

A report to the Governor and the General Assembly of Virginia by the Joint Legislative Audit and Review Commission (JLARC) from December of 2021 found a statewide shortage of at least 200,000 affordable rental units.¹¹ This shortage is a major factor causing rent burden among tenants. The U.S. Department of Housing and Urban Development (HUD) defines rent burden as spending more than 30% of income on housing and severely rent burdened as more than 50%.¹² Approximately 29% of Virginia households are housing cost burdened, paying more than 30% of income for shelter.¹³ Of those, nearly half are extremely housing cost burdened, paying more than 50% of income for shelter.¹⁴

B. Archaic Legal Terminology

An eviction lawsuit in Virginia is called a Summons for Unlawful Detainer (Civil Claim for Eviction).¹⁵ This title contains three words which sound criminal in nature: “summons,” “unlawful,” and “detainer.” The National Association for Court Management reports that access to justice exists only when

⁹ Thomas A. Loftus, *Promoting Housing Stability, Fairness and Affordability by Combating Regulatory Barriers*, EQUITABLE HOUSING INSTITUTE 1, 3 (2021), https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI-VA_House_letter_re_evictions_8-16-20website.pdf.

¹⁰ Princeton University’s Eviction Lab gathered data from forty-seven states and D.C. from 2000 through 2016 to determine these eviction rates. PRINCETON EVICTION LAB, https://evictionlab.org/map/?m=raw&c=p&b=er&s=all&r=states&y=2016&z=3.53&lat=38.96&lon=-96.52&lang=en&l=51_-79.46_38.00 (last visited Sept. 10, 2022).

¹¹ *Affordable Housing in Virginia*, JOINT LEGIS. AUDIT & REV. COMM’N, <http://jlarc.virginia.gov/landing-2021-affordable-housing-in-virginia.asp> (last visited Sept. 11, 2022).

¹² Jeff Larrimore & Jenny Scheutz, *Assessing the Severity of Rent Burden on Low-Income Families*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (Dec. 22, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.html>.

¹³ *Addressing Evictions Before, During, and After COVID-19*, VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (Jan. 2021), <https://dhcd.virginia.gov/sites/default/files/Docx/verp/evictions-report.pdf>.

¹⁴ *Affordable Housing in Virginia*, *supra* note 11.

¹⁵ Virginia Legal Aid Society, Inc., *Evictions (including Lockouts and Utility Shutoffs)*, VALEGALAID.ORG, <https://www.valegalaid.org/resource/evictions-including-lockouts-and-utility-shut> (last visited Sept. 19, 2022).

the public can understand, use, and afford information and services to prevent and resolve their legal disputes to achieve just outcomes without delay.¹⁶ Because the title of a Summons for Unlawful Detainer sounds criminal, but really is not, defendants can be discouraged or intimidated from coming to court. The rate of default judgments in General District Court (GDC) housing cases is extremely high.¹⁷ In December 2017, the National Center for State Courts released the “Virginia Self-Represented Litigant Study.” This groundbreaking study of Virginia’s civil courts was the first such study ever in Virginia, and possibly only the second in the entire country.¹⁸ The study looked at 174,000 housing cases in GDC.¹⁹ Eliminating cases which were dismissed, nonsuited, not served, transferred to another court, or otherwise did not result in a disposition left 98,741 cases.²⁰ Of these, 72,585 (73.5%) were default judgments.²¹ In almost three out of four dispositions, the tenant did not come to court.²²

C. Five Years without Medicaid Expansion

In 2018, Virginia became the thirty-third state to approve Medicaid expansion, which became effective January 1, 2019.²³ During the five years from 2014 through 2018, Virginia lost a total of \$8.5 billion in federal funding as a result of not expanding Medicaid.²⁴ This left 400,000 low-income Virginians without health insurance for five years, some of whom were forced to choose between paying medical bills or paying rent.

D. Foreclosure Aftermath

Between 2006 and 2014, an estimated ten million homeowners lost their

¹⁶ *Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials*, NAT’L ASS’N FOR COURT MGMT., 14 (2019), <https://nacmnet.org/wp-content/uploads/NACM-Plain-Language-Guide-20190107.pdf>.

¹⁷ Shauna Strickland et al., *Virginia Self-Represented Litigant Study: Outcomes of Civil Cases in General District Court, Juvenile & Domestic Relations Court, and Circuit Court*, NAT’L CTR. FOR STATE COURTS 1, 4 (2017), <https://brls.org/wp-content/uploads/2018/03/Outcome-Report.pdf>.

¹⁸ John E. Whitfield, *Summary Report on the Finds of the Virginia Self-Represented Litigant Study*, BLUE RIDGE LEGAL SERVICES, INC. 1, 12 (2018), <https://brls.org/wp-content/uploads/2018/03/Summary-Report-on-the-Findings-of-the-Virginia-Self-Represented-Litigant-Study-rev.pdf>.

¹⁹ Strickland et al., *supra* note 17.

²⁰ *Id.* at 56.

²¹ *Id.*

²² *Id.*

²³ Doug Stanglin, *Virginia, After 5-year Battle, Passes Medicaid Expansion for 400,000 Poor People*, USA TODAY (May 31, 2018), <https://www.usatoday.com/story/news/2018/05/31/virginia-after-5-year-battle-becomes-33rd-state-pass-medicaid-expansion/658785002>; Louise Norris, *Virginia and the ACA’s Medicaid Expansion*, HEALTHINSURANCE.ORG (July 5, 2022), <https://www.healthinsurance.org/medicaid/virginia>.

²⁴ Louise Norris, *Virginia and the ACA’s Medicaid Expansion*, HEALTHINSURANCE.ORG (July 5, 2022), <https://www.healthinsurance.org/medicaid/virginia>.

homes to foreclosure.²⁵ With so many people being forced from their homes, rent increases were the natural consequence.²⁶

E. Gentrification

Many historically black and brown neighborhoods in Richmond, Virginia—such as Jackson Ward, Church Hill, and Northside—are rapidly becoming gentrified.²⁷ Evictions have been shown to be positively associated with neighborhoods that are in the early stages of gentrification.²⁸

F. Government Sponsored Segregation

In the 1930s and 1940s, the federal government sponsored the Home Owners Loan Corporation, which created “security maps” to rate neighborhoods and refinance mortgages to prevent widespread foreclosures during and after the Great Depression.²⁹ Neighborhoods were classified into four categories.³⁰ “A” areas were colored green, labeled First Grade, and considered most attractive for refinancing, while “B” areas were colored blue, labeled Second Grade, and regarded as next most attractive.³¹ “C” areas were colored yellow, labeled Third Grade, and considered as transition zones in decline.³² “D” areas were colored red, labeled Fourth Grade, and considered as characterized by detrimental influences to a pronounced degree. Race was the dominant factor in determining a neighborhood’s zone: white neighborhoods were nearly always classified as A or B areas, while black neighborhoods were almost always classified as D areas.³³ A comparison of the map of Richmond

²⁵ Ali Wolf, *This Is Not a Repeat of the 2008 Housing Bubble*, FORTUNE (Sept. 9, 2021), <https://fortune.com/2021/09/09/housing-bubble-2008-market-correction-great-recession/>.

²⁶ Rents have been found to rise with increasing nearby single-family home foreclosure rates. Carolina K. Reid, *The Rise of Single-Family Rentals after the Foreclosure Crisis*, TERNER CTR. FOR HOUS. AND INNOVATION 1, 2 (Apr. 2018), https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Single-Family_Renters_Brief.pdf.

²⁷ Jackson Ward, once known as the Harlem of the South, has been transformed into a majority white community, with African Americans comprising only about 23% of the population. In Church Hill, African American households have declined by 20% after comprising more than 90% of households in 2000. Mariah Williams, *There Goes the Neighborhood: Combating Displacement in Richmond’s Historically Black Neighborhoods*, RVA MAG (Nov. 12, 2021), <https://rvamag.com/politics/local-politics/there-goes-the-neighborhood-combating-displacement-in-richmonds-historically-black-neighborhoods.html>.

²⁸ Alex Ramiller, *Displacement Through Development? Property Turnover and Eviction Risk in Seattle*, 59 URBAN STUD. 1148, 1148 (May 2022).

²⁹ *Home Owners’ Loan Corporation, Home Loan Security Map (“Redlining” Map) of Cleveland, 1933*, HISTORY 1952/ HARVARD UNIV., <https://hist1952.omeka.fas.harvard.edu/exhibits/show/galleries-main/item/160> (last visited Sept. 10, 2022).

³⁰ Leah Foltman & Malia Jones, *How Redlining Continues To Shape Racial Segregation In Milwaukee: 1930s Lending Map Reveals the Policy Roots of Housing Discrimination*, WISCONTEXT (Feb. 28, 2019), <https://www.wiscontext.org/how-redlining-continues-shape-racial-segregation-milwaukee>.

³¹ *Id.*

³² *Redlining in Virginia*, ARCGIS, <https://www.arcgis.com/apps/View/index.html?appid=909e8528cd3a4df190756596dcf5d693> (last visited Sep. 19, 2022).

³³ *Id.*

areas redlined in the 1930s³⁴ with the map of Richmond areas with high eviction rates in 2016³⁵ shows a very high degree of overlap.

G. Little Government Support for Tenants.

For at least the past thirty years, the Low-Income Housing Tax Credit (LIHTC) has been the most important federal resource for creating affordable housing in the U.S.³⁶ Over twenty states and the District of Columbia have established state LIHTC programs.³⁷ Virginia's LIHTC program was not established until 2021 and was funded at a meager \$15 million per year.³⁸ By comparison, the slightly larger state of New Jersey funds its state LIHTC program at \$183.33 million per year (\$1.1 billion over six years) and is proposing \$600 million per year starting next fiscal year.³⁹

H. Low Eviction Filing Fee

Virginia has one of the lowest filing fees in the nation for a landlord to file an eviction lawsuit, generally between \$58 and \$64 for filing and sheriff's service on one defendant.⁴⁰ By contrast, the filing and service fees for an eviction lawsuit in North Carolina range between \$126.00 and \$180.00,⁴¹ while in Alabama the fee is \$256.00.⁴² An analysis using Princeton EvictionLab data found that higher filing fees and other barriers to eviction filing lowered eviction filing rates.⁴³

I. Relatively Higher Rent/Income Ratio

The minimum wage in Virginia did not increase for almost twelve years, from July 24, 2009 when the federal rate was set at \$7.25 per hour to May 1,

³⁴ *Richmond, VA*, MAPPING INEQUALITY, REDLINING IN NEW DEAL AMERICA, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.34/-77.609&city=richmond-va> (last visited Sep. 19, 2022).

³⁵ Teresa, *supra* note 3.

³⁶ *Low-Income Housing Tax Credit (LIHTC)*, U.S. DEP'T OF HOUS. AND URB. DEV. OFF. OF POL'Y DEV. AND RSCH, <https://www.huduser.gov/portal/datasets/lihtc.html> (last visited Sept. 20, 2022).

³⁷ Mark O'Meara, *Everything You Need to Know About State LIHTCs in 2022*, NOVOGRADAC (May 2022), <https://www.novoco.com/periodicals/articles/everything-you-need-know-about-state-lihtcs-2022>.

³⁸ *Virginia LIHTC Incentive Enacted With \$15 Million Annual Statewide Cap*, NOVOGRADAC (Apr. 2021), <https://www.novoco.com/news/virginia-lihtc-incentive-enacted-15-million-annual-statewide-cap>.

³⁹ *NJEDA Board Approves Rules for Aspire Development Tax Credit Program*, N.J. ECON. DEV. AUTH., (Nov. 2021), <https://www.njeda.com/njeda-board-approves-rules-for-aspire-development-tax-credit-program/>; *New Jersey Legislation Would Create Affordable Housing Credit in Select Neighborhoods*, NOVOGRADAC (Mar. 2022), <https://www.novoco.com/news/new-jersey-legislation-would-create-affordable-housing-credit-select-neighborhoods>.

⁴⁰ Elizabeth Souza, *Virginia Eviction Process*, IPROPERTYMANAGEMENT (Nov. 2021), <https://iproperlymanagement.com/laws/virginia-eviction-process>.

⁴¹ *Court Costs and Fees Chart*, N.C. JUD. BRANCH (2021), <https://www.nccourts.gov/assets/documents/publications/Civil-Costs-Chart-Dec-1-2021.pdf?VersionId=InoyuotkWolpSRNDSf-waf0p6Swz3PHf9>.

⁴² Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316, 335 (2021).

⁴³ *Id.* at 339.

2021 when the state rate increased to \$9.50 per hour.⁴⁴ From 2001 to 2019, and adjusting for inflation, rents in Virginia increased by 23% while incomes increased by only 10%.⁴⁵ Between 2001 and 2015, incomes remained flat while rents increased by 20%.⁴⁶ As a result, in just fourteen years, an affordable rent of 30% of income became an unaffordable rent of 36% of income.⁴⁷

J. Unfavorable Landlord-Tenant Laws

Prior to the COVID-19 pandemic, the Virginia eviction process was an unforgiving rush to judgment. Typically, rent was due on the first day of the month, late after the fifth, and the landlord could give a five-day nonpayment notice as early as the sixth.⁴⁸ If rent were unpaid, the landlord could file the eviction lawsuit as early as the twelfth or thirteenth. By law, the case had to be heard within three weeks.⁴⁹ By the time of the court hearing on day thirty-three or thirty-four, in order to stay, the tenant had to pay the old rent and late fees, a new month's rent and late fees, the court costs, and if an attorney was involved, the attorney's fees.⁵⁰ In brief, a tenant would have only five days to pay a missed payment, could face a judgment of possession against them twenty-one days later, and be evicted by the sheriff eleven days later. A tenant could become homeless in less than six weeks.⁵¹ When eviction lawsuits went before a judge, tenants won less than one percent of the time.⁵²

In response, over the next five legislative sessions—2019 Regular, 2020 Regular, 2020 Special, 2021 Regular, and 2021 Special—the Virginia General Assembly passed more than two dozen laws which are more fair, favorable, and friendly to tenants.⁵³ That progress came to an abrupt halt in the

⁴⁴ Prior to May 1, 2021, Code of Virginia § 40.1-28.10 set the Virginia minimum wage at the federal minimum wage of \$7.25 per hour, as per 29 U.S.C. § 206. Code of Virginia § 40.1-28.10 increased the Virginia minimum wage to \$9.50 per hour on May 1, 2021, \$11.00 per hour on January 1, 2022, and will increase it to \$12.00 per hour on January 1, 2023. Ned Oliver, *Virginia's Minimum Wage Rises to \$9.50 an Hour on Saturday - the First Increase in Over a Decade*, VA MERCURY (Apr. 2021), <https://www.virginiamercury.com/2021/04/30/virginias-minimum-wage-rises-to-9-50-an-hour-on-saturday-the-first-increase-in-over-a-decade/>.

⁴⁵ *Virginia Federal Rental Assistance Fact Sheet*, CTR. ON BUDGET AND POL'Y PRIORITIES, (Jan. 2022), <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#VA>.

⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ VA. CODE ANN. § 55.1-1204 (2021).

⁴⁹ *Id.* at § 8.01-126(B).

⁵⁰ *Id.* at § 55.1-1250(C).

⁵¹ Terrence McCoy, *Eviction Isn't Just About Poverty, It's Also About Race—and Va. Proves It*, THE WASH. POST Nov. 10, 2018), https://www.washingtonpost.com/local/social-issues/eviction-isnt-just-about-poverty-its-also-about-race--and-virginia-proves-it/2018/11/10/475be8ae-d7bd-11e8-aeb7-ddcad4a0a54e_story.html?noredirect=on.

⁵² Strickland et al., *supra* note 17, at 56.

⁵³ Noah Robertson, *A National Model? How Va. is Improving Landlord-Tenant Relations.*, CHRISTIAN SCIENCE MONITOR (Sept. 20, 2021), <https://www.csmonitor.com/USA/Politics/2021/0920/A-national-model-How-Virginia-is-improving-landlord-tenant-relations>.

2022 Regular Session. Five pro-tenant bills were either defeated by the legislature or vetoed by the Governor: HB 802, HB 803, HB 804, SB 284, and HB 614.⁵⁴

This section will review in detail the remarkable changes made in Virginia landlord-tenant law over that brief three-year period in five legislative sessions and analyze the presenting problem and the reform enacted. The following section will focus on the interrupted progress.

II. FIRST STEPS TO REFORM: THE 2019 GENERAL ASSEMBLY SESSION

The April 8, 2018 New York Times story sent shockwaves through Virginia government, landlord associations, and tenant advocates.⁵⁵ Governor Ralph Northam proposed adding \$2.6 million to the budget to fund thirty-five legal aid attorneys statewide to combat evictions—the first time a Virginia Governor had ever recommended such funding.⁵⁶ Lieutenant Governor Justin Fairfax convened three eviction reduction roundtables across Virginia seeking input from all stakeholders.⁵⁷ Richmond Mayor Levar Stoney called

⁵⁴ H.D. 802, 2022 Gen. Assemb., Reg. Sess., (Va. 2022); H.D. 803, 2022 Gen. Assemb., Reg. Sess., (Va. 2022); H.D. 804, 2022 Gen. Assemb., Reg. Sess., (Va. 2022); S. 284, 2022 Gen. Assemb., Reg. Sess., (Va. 2022); H.D. 614, 2022 Gen. Assemb., Reg. Sess., (Va. 2022).

⁵⁵ A small sampling of the media coverage includes the following: Melissa Hipolit, *'Richmond is a Pandora's Box' of Factors to Explain High Eviction Rate*, WTVR 6 NEWS RICHMOND (Apr. 9, 2018), <https://www.wtvr.com/2018/04/09/richmond-is-a-pandoras-box-of-factors-to-explain-high-eviction-rate>; Mark Robinson, *Fairfax, Stoney Convene Panel*, RICHMOND TIMES-DISPATCH (July 16, 2018), https://richmond.com/news/local/fairfax-stoney-convene-panel-on-how-to-reduce-eviction-rates/article_bc8d9486-8c80-5d10-9bc6-9903ca0e542b.html; Reema Amin, *Measures Sought to Protect Tenants From Early Evictions*, DAILY PRESS (June 19, 2018), <https://www.dailypress.com/government/virginia/dp-nws-politics-housing-commission-evictions-20180618-story.html>; Ryan Murphy, *More Renters' Rights? Extra Time to Pay?*, THE VIRGINIAN-PILOT (June 20, 2018), https://www.pilotonline.com/government/article_b04921ee-73de-11e8-847a-034647a79b87.html; Amelia Heymann, *Richmond's Eviction Problem And What's Being Done About It*, 8NEWS WRIC RICHMOND (Sept. 24, 2020), <https://www.wric.com/news/local-news/richmond/evictions-in-richmond/>; Ned Oliver, *Among Fixes to Reduce Evictions: More Pro-Bono Lawyers, Plain-English Legal Forms and Poverty Simulation for Judges*, VIRGINIA MERCURY (Oct. 5, 2018), <https://www.virginiamercury.com/2018/10/05/among-fixes-to-reduce-evictions-more-pro-bono-lawyers-plain-english-legal-forms-and-poverty-simulation-for-judges/>; Eric Perry, *How Does Richmond Move Forward After High Eviction Rate*, NBCNEWS12 (Oct. 8, 2018), <https://www.nbc12.com/2018/10/08/how-does-richmond-move-forward-after-high-eviction-rate>; Terrence McCoy, *Eviction Isn't Just About Poverty. It's also About Race — and Virginia Proves It*, WASH. POST (Nov. 10, 2018), https://www.washingtonpost.com/local/social-issues/eviction-isnt-just-about-poverty-its-also-about-race-and-virginia-proves-it/2018/11/10/475be8ae-d7bd-11e8-aeb7-ddcad4a0a54e_story.html.

⁵⁶ Press Release, Former Va. Governor Ralph Northam, Governor Ralph Northam Unveils Budget Amendments for the 2018–2020 Biennium to the Joint Money Committees (Dec. 18, 2018), <https://www.governor.virginia.gov/newsroom/all-releases/2018/december/headline-837263-en.html>.

⁵⁷ Reema Amin, *Lieutenant Governor Joins Local Discussion on Eviction Solutions*, DAILY PRESS (July 17, 2018), <https://www.dailypress.com/government/virginia/dp-nws-politics-eviction-rates-fairfax-20180716-story.html>.

eviction reduction one of his top priorities and called housing the “vaccine for poverty.”⁵⁸ Eviction reduction was supported by all major tenant and landlord groups: Richmonders Involved to Strengthen our Communities,⁵⁹ the Virginia Interfaith Center for Public Policy,⁶⁰ the Virginia Poverty Law Center,⁶¹ the Richmond Association of Realtors,⁶² the Apartment and Office Building Association,⁶³ the Virginia Apartment and Management Association,⁶⁴ and Virginia Realtors,⁶⁵ to name just a few.

The Virginia Housing Commission took the unprecedented step of creating an Evictions Sub-Workgroup as part of its Affordable Housing, Real Estate Law, Mortgages, Neighborhood Transitions, and Building Codes Workgroup.⁶⁶ The Evictions Sub-Workgroup was comprised of both landlord and tenant stakeholders, and included major landlord lobbyists, realtors, fair housing advocates, and legal aid attorneys.⁶⁷ Over the next six months, the Evictions Sub-Workgroup proposed seven legislative changes to the Affordable Housing Workgroup, which were referred to the Virginia Housing Commission and adopted as recommendations to the 2019 Regular Session of the Virginia General Assembly.⁶⁸ With a 51-49 Republican majority in the House of Delegates, a 21-19 Republican majority in the State Senate,⁶⁹ and a Democratic Governor, all of them became law as of July 1, 2019.⁷⁰ The reforms were as follows:

⁵⁸ William Brangham, *The Hidden Health Costs of Eviction*, PBS NEWSHOUR (Jan. 13, 2020), <https://www.pbs.org/newshour/show/the-hidden-health-costs-of-eviction>.

⁵⁹ *Affordable Housing*, RICHMONDERS INVOLVED TO STRENGTHEN OUR COMMUNITY, https://www.risrichmond.org/housing_evictions (last visited Sept. 9, 2022).

⁶⁰ *General Assembly 2019*, VA. INTERFAITH CTR. FOR PUB. POL’Y (2019), <https://www.virginiainterfaithcenter.org/general-assembly/general-assembly-2019>.

⁶¹ *Initial Analysis and Recommendations to Reduce Evictions in Virginia*, VA. DEP’T OF HOUS. AND CMTY. DEV. 1, 11 (Jan. 2020), <https://www.dhcd.virginia.gov/sites/default/files/Docx/verp/evictions-initial-analysis-and-recommendations.pdf>.

⁶² *2019 General Assembly Recap*, RICHMOND ASSOC. OF REALTORS (Mar. 1, 2019), <https://rarealtors.com/2019-general-assembly-recap>.

⁶³ *Virginia Government Affairs/Metropolitan Political Action Committee*, APARTMENT AND OFF. BLDG. ASSOC. OF METRO. WASH. (Nov. 13, 2018), <https://www.aoba-metro.org/events/virginia-government-affairs--copy>.

⁶⁴ Dave Ress, *Proposed Changes to Virginia Eviction Laws Aim for Fairer Balance*, THE VIRGINIAN-PILOT (Nov. 28, 2018) https://www.pilotonline.com/government/virginia/article_c06dc14a-f351-11e8-ba74-0b1c8168dc06.html.

⁶⁵ *Id.*

⁶⁶ 40 VA. HOUS. COMM’N. 2018 ANN. REP. (2019).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *2019 Virginia Legislative Session*, BALLOTPEDIA, https://ballotpedia.org/2019_Virginia_legislative_session (last visited Sept. 18, 2022).

⁷⁰ *See id.*; *see generally* *2019 Session*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?191+lst+ALL+HB1690> (last visited Sept. 19, 2022) (listing all the bills passed in the Virginia General Assembly in 2019).

A. Written Leases Required

Under an oral lease, verifying the terms of the agreement and deciding the rights and responsibilities of each party is difficult. One small advantage to the tenant of an oral lease is that the tenant has the ability to end the lease with a thirty-day written notice.⁷¹ The corresponding disadvantage to the tenant is that the landlord may do the same.⁷² More often than not, an oral lease works to the tenant's disadvantage.⁷³

Under this new law, landlords must offer written leases.⁷⁴ If the landlord does not, the law sets out a specific default lease that will apply.⁷⁵ The default lease is for twelve months with no automatic renewal.⁷⁶ Rent is paid in twelve monthly payments.⁷⁷ Rent is due on the first of the month and late after the fifth of the month.⁷⁸ If no amount is agreed upon, rent is at the fair market value.⁷⁹ A reasonable late fee may be charged.⁸⁰ The security deposit can be no more than two months' rent.⁸¹

B. Upward Amendments and Required Evidence.

A serial eviction filing occurs when a landlord files an unlawful detainer eviction lawsuit due to nonpayment of rent for each month rent is claimed to be overdue.⁸² These serial filings can happen one after the other even if prior lawsuits are still undecided. Serial eviction filings exacerbate tenants' housing costs, involving multiple court costs and attorney's fees. One study of eight million eviction court records found almost half of total filings were serial filings.⁸³ Many landlords justified this because if a new month's rent became due after the court filing, the law did not grant the right to automatically amend upward.⁸⁴ This potential bar to an upward amendment changed under this new law, and on request of the landlord, the judge must allow the

⁷¹ Samantha-Rae Tuthill, *The Advantages and Disadvantages of Oral Leases*, LAWINFO (Oct. 15, 2020), <https://www.lawinfo.com/resources/landlord-tenant/the-advantages-and-disadvantages-of-oral-leas.html>.

⁷² *Id.*

⁷³ *See id.*

⁷⁴ VA. CODE ANN. § 55.1-1204(B) (2019).

⁷⁵ *Id.* at § 55.1-1204(C).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at § 55.1-1204(B)(4).

⁷⁹ *Id.* at § 55.1-1204(C)(3).

⁸⁰ Under Code of Virginia §55.1-1204(E), this late fee now is limited to the lesser of 10% of the periodic rent or 10% of the unpaid balance. *See* VA. CODE ANN. § 55.1-1204(E) (2019) (limiting late fees to the lesser of 10% of the periodic rent or 10% of the unpaid balance).

⁸¹ VA. CODE ANN. § 55.1-1204(C)(6) (2019).

⁸² Leung et al., *supra* note 42, at 316.

⁸³ *Id.*

⁸⁴ *See id.* at 323.

lawsuit to be amended to cover all rent and fees claimed as of the trial date.⁸⁵

The new law also imposed a new requirement for a landlord to obtain a judgment of possession in order to start the sheriff's eviction process.⁸⁶ The landlord must present the court with a proper termination notice that the court enters into evidence before the landlord may ask for possession.⁸⁷ Under prior law, entering a proper termination notice into evidence was not required for a landlord to obtain a judgment of possession.

C. Pilot Eviction Diversion Program

Eviction diversion programs (EDPs) help landlords and tenants create mutually acceptable agreements to stop a court case from proceeding and arrive at an out-of-court resolution, usually a rent payment plan.⁸⁸ Such programs exist, either statewide or in cities, in twenty-eight states and the District of Columbia.⁸⁹ The majority of such programs are voluntary with participation entirely at the option of the parties—particularly the landlord.⁹⁰ Virginia's pilot EDP was one of the first mandatory programs, provided the tenant met a host of narrow and strict requirements.⁹¹

The pilot EDP started July 1, 2020—a delayed implementation date of one year—in the cities of Richmond, Petersburg, Hampton, and Danville, and has a scheduled expiration date of July 1, 2023.⁹² Under the pilot EDP, nonpayment of rent must be the only issue between the parties.⁹³ The landlord and tenant must agree on the amount due as of the return date (the first court

⁸⁵ VA. CODE ANN. § 8.01-126(E)(2)(a) (2022).

⁸⁶ *Id.* at § 8.01-129(B).

⁸⁷ *Id.* at § 8.01-126(E)(2)(a).

⁸⁸ *Eviction Diversion Programs*, EVICTION INNOVATION (Sept. 11, 2022), <https://evictioninnovation.org/innovations/eviction-diversion-programs>.

⁸⁹ California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. *See id.*

⁹⁰ MARK TRESKON ET AL., EVICTION PREVENTION AND DIVERSION PROGRAMS: EARLY LESSONS FROM THE PANDEMIC 18, 21-22 (2021).

⁹¹ VA. CODE ANN. § 55.1-1262 (2022); *see generally* David Slipher, *Expiration of Renter's Protections Sparks Fear of Increased Evictions*, VCU NEWS (June 15, 2022), <https://news.vcu.edu/article/2022/06/expiration-of-renters-protections-sparks-fear-of-increased-evictions> (discussing Virginia's evictions and that the state's EDP serves as a model program).

⁹² VA. CODE ANN. §§ 55-248.40:1-3 (2019) (current version at VA. CODE ANN. §§ 55.1-1260-62 (2022)); *Eviction Rankings: Top Evicting Large Cities in the U.S.*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en> (last visited Sept. 11, 2022) (illustrating that among large U.S. cities, Richmond and Hampton had the second and third highest eviction rates, respectively); *Eviction Rankings: Top Evicting Mid-Size Cities in the U.S.*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=1&d=evictionRate> (last visited Sept. 11, 2022) (illustrating that among mid-size U.S. cities, Petersburg had the second highest eviction rate and Danville's eviction rate was 7.2%, three times the national average of 2.34%).

⁹³ VA. CODE ANN. §§ 55.1-1260, 1262(E) (2019).

date).⁹⁴ The tenant must come to court on the return date, ask to be in the EDP, and pay the landlord at least 25% of the amount due as of the return date.⁹⁵ The tenant also must testify about why they fell behind in rent and certify that they have sufficient funds to make payments under the EDP.⁹⁶ In the past twelve months, the tenant must not have been late in rent more than two times in a six-month period or more than three times in a twelve-month period.⁹⁷ Lastly, the tenant must not have used the right of redemption (obtained the dismissal of an unlawful detainer by paying to zero balance) in the past six months, and must not have participated in an EDP in the last twelve months.⁹⁸

If the case is put into the EDP, a court-ordered payment plan is issued.⁹⁹ The next three payments of 25% of the amount due as of the return date are due by the fifth day of the next three months, to be made by cashier's check, certified check, or money order.¹⁰⁰ Ongoing rent must be paid by the tenant within five days of the due date set by the lease.¹⁰¹ If the tenant makes all payments as required by the payment plan, the eviction lawsuit is dismissed.¹⁰² If not, the landlord may seek a judgment of possession.¹⁰³ A tenant may participate in an EDP only once in any twelve-month period of time.¹⁰⁴

D. Tenant Attorney Fees in Poor Housing Cases

The “American Rule” requires that each party bear its own attorney’s fees in litigation absent a statutory or contractual exception.¹⁰⁵ Fee-shifting provisions are exceptions to that general rule.¹⁰⁶ The threat of paying attorney’s fees can add pressure to the opposing party.¹⁰⁷ There are few other areas of law in which this pressure is greater than in landlord-tenant law. Unilateral attorney fees clauses are common in landlord-tenant leases.¹⁰⁸ The Virginia Residential Landlord and Tenant Act (VRLTA) provides both landlords and

⁹⁴ *Id.* at § 55.1-1262(B).

⁹⁵ *Id.* at § 55.1-1262(A)(1)-(2).

⁹⁶ *Id.* at § 55.1-1262(A)(3)-(4).

⁹⁷ *Id.* at § 55.1-1262(A)(5).

⁹⁸ *Id.* at § 55.1-1262(A)(6)-(7).

⁹⁹ *Id.* at § 55.1-1262(B).

¹⁰⁰ *Id.* at § 55.1-1262(B)(1)-(2).

¹⁰¹ *Id.* at § 55.1-1262(B)(3).

¹⁰² *Id.* at § 55.1-1262(C).

¹⁰³ *Id.* at § 55.1-1262(D).

¹⁰⁴ *Id.* at § 55.1-1262(A).

¹⁰⁵ *Fee-Shifting*, AM. BAR ASS’N, https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/topics/fee_shifting/ (last visited Sept. 14, 2022).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jeffrey C. Bright, *Unilateral Attorney's Fees Clauses: A Proposal to Shift to the Golden Rule*, 61 DRAKE L. REV. 85, 89 (2012).

tenants the right to obtain attorney's fees in certain types of successful litigation; however, cases where landlords can obtain attorney's fees are far more common than those where tenants can obtain attorney's fees.¹⁰⁹ As a result, landlords use the threat of attorney's fees as leverage in litigation with tenants.

Under this new law, there are two types of cases that allow attorneys who represent tenants and win to recover attorney's fees.¹¹⁰ One is the Tenant's Assertion.¹¹¹ To file a Tenant's Assertion under the statute, a tenant must be current in rent and stay current, have given reasonable notice of the poor housing conditions to the landlord (or have someone else do so on behalf of the tenant), and wait a reasonable period of time before filing.¹¹² The tenant also must pay ongoing rent into court.¹¹³ If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.¹¹⁴

The other circumstance under which tenants can recover attorney's fees is a defense to an eviction lawsuit for nonpayment of rent.¹¹⁵ To use this defense, the landlord must have been given notice of the poor housing conditions by the tenant (or someone else on behalf of the tenant) before the eviction lawsuit was filed. If the tenant remains in possession of the premises, the tenant cannot stop paying rent to the landlord. Instead, the tenant in possession must pay the unpaid rent into court.¹¹⁶ If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.¹¹⁷

¹⁰⁹ The VRLTA provided seven ways for landlords to recover attorney fees: VA. CODE ANN § 55.1-1210 (2019) (refusing to allow access); VA. CODE ANN § 55.1-1229 (2019) (amended 2021) (refusing to allow the unit to be shown for sale or lease); VA. CODE ANN § 55.1-1233 (2019) (failing to surrender possession); VA. CODE ANN § 55.1-1245 (2019) (failing to comply with the lease by the tenant); VA. CODE ANN § 55.1-1250(B) (2019) (post-judgment redemption by the tenant); VA. CODE ANN § 55.1-1251 (2019) (remedy after termination); VA. CODE ANN § 55.1-1253(B) (2019) (holdover tenancy). The VRLTA provided seven ways for tenants to recover attorney fees: VA. CODE ANN § 55.1-1203(A) (2019) (improper application deposits); VA. CODE ANN § 55.1-1208(B) (2019) (use of a prohibited lease provision); VA. CODE ANN § 55.1-1210 (2019) (abuse of access); VA. CODE ANN § 55.1-1226(E) (2019) (violation of the security deposit law); VA. CODE ANN § 55.1-1234 (2019) (noncompliance with the lease by the landlord); VA. CODE ANN § 55.1-1238 (2019) (failure to deliver possession); VA. CODE ANN § 55.1-1239 (2019) (wrongful failure to provide an essential service).

¹¹⁰ 7 *New Laws That Are More Fair, Favorable & Friendly To Tenants*, CENT. VA. LEGAL AID SOC'Y (Apr. 8, 2019), <https://www.valegalaid.org/files/E095B726-FCD8-81C1-17DC-A16C7ED73FFF/attachments/4C5F451B-2365-4364-8E04-E9A2E1CC170D/new-landlord-tenant-laws-2019.pdf>.

¹¹¹ VA. CODE ANN § 55-248.27(F) (2019) (current version at VA. CODE ANN § 55.1-1244(G)).

¹¹² *Id.* at § 55.1-1244.

¹¹³ *Id.* at § 55.1-1244(B)(2).

¹¹⁴ *Id.* at § 55.1-1244(G).

¹¹⁵ *Id.* at § 55.1-1241.

¹¹⁶ *Id.* at § 55.1-1241(A)(2).

¹¹⁷ *Id.* at § 55.1-1241(E).

E. Extended Right of Redemption

Under redemption, the eviction lawsuit must be dismissed as paid if the tenant pays the landlord, the landlord's attorney, or the court all amounts owed as of the court date.¹¹⁸ All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, and reasonable attorney's fees (if a landlord's attorney is involved).¹¹⁹ Previously, a tenant could use this right of redemption only once in any twelve-month period of time that the tenant continued to live in the same place.¹²⁰

Under the new law, tenants are provided an additional chance to pay their rent late and stay in their home, called an extended right of redemption (extended right to pay and stay).¹²¹ When a judge decides in the landlord's favor, a judgment of possession is entered.¹²² After that, the landlord may ask the court to issue a Writ of Eviction.¹²³ This writ goes from the clerk to the sheriff to the tenant and authorizes the sheriff to evict on a specific date.¹²⁴ Under the extended right of redemption, the tenant may pay the landlord, the landlord's attorney, or the court all amounts owed as of two business days before the sheriff's scheduled eviction date, and thereby have the eviction cancelled.¹²⁵ All amounts owed meant all rent (including a new month's rent if that had come due), all late fees set forth in a written lease (including a new month's late fee if that had come due), court costs, sheriff's fees, and reasonable attorney's fees (if a landlord's attorney was involved).¹²⁶ Payment must be by cashier's check, certified check, or money order.

F. Use Writ or Lose Writ

Previously, when a landlord obtained a judgment of possession, the landlord could use it for up to twelve months before getting the Writ of

¹¹⁸ Central Virginia Legal Aid Society-Richmond Branch, *Tenant's Right to Prevent Eviction for Non-payment of Rent by Redemption, Redemption Tender, or Extended Redemption*, VALEGALAID, <https://www.valegalaid.org/resource/tenants-right-to-prevent-eviction-for-non-payment-of-rent-by-paying-all-amounts-owed-redemption-or-offering-to-pay-all-amounts-owed-redemption-tender-or-paying-all-amounts-owed-before-eviction-extended-redemption> (last updated Apr. 1, 2019).

¹¹⁹ Pursuant to *Hubbard v. Henrico Limited Partnership*, 255 Va. 335, 497 S.E.335 (1998), once a tenant makes payment in full, the redemption is automatic: "The tenant's act in tendering the amount due before the first court return date triggers the protection provided by the statute. Thus, no further act is required from the tenant before 'all further proceedings in the . . . unlawful detainer shall cease.'"

¹²⁰ VA. CODE ANN. § 55-248.34:1 (2018) (current version at VA. CODE ANN. § 55.1-1250 (2021)).

¹²¹ *Id.* at § 55.1-1250.

¹²² *Id.* at § 55.1-1250(A).

¹²³ *Id.* at § 55.1-1250.

¹²⁴ Central Virginia Legal Aid Society- Richmond Branch, *supra* note 118.

¹²⁵ See VA. CODE ANN. § 55.1-1250(e) (2021); see Central Virginia Legal Aid Society- Richmond Branch, *supra* note 118.

¹²⁶ Va. Code Ann. § 55.1-1250(E) (2021).

Eviction.¹²⁷ This twelve-month period during which a landlord could trigger an eviction would hang over the head of the tenant even if all rent had been paid and the tenant was following the lease.¹²⁸ Under the new law, the time frame was shortened to 180 days, giving both landlord and tenant greater certainty.¹²⁹

G. Access to Appeal

To appeal an eviction judgment based on nonpayment of rent, the tenant previously had to post an appeal bond for the amount of the money judgment for rent.¹³⁰ Tenants also had to post an appeal bond for up to twelve months future rent in advance, and could also be required to post an appeal bond for up to three months future damages, all within ten days of the date of the judgment.¹³¹ This estimate of future rent due while the appeal was pending was not related to the actual rent due during this period and created an impossible barrier to a tenant's appeal.¹³² Under the new law, to appeal an eviction judgment based on nonpayment of rent, the tenant still had to post an appeal bond for the amount of the money judgment for rent within ten days of judgment.¹³³ However, after that, the tenant only must ongoing rent as it becomes due.¹³⁴

Providing greater clarity to landlord-tenant relationships by requiring written leases, allowing tenants more time to pay and stay in their homes while allowing landlords less time to evict after a judgment of possession, and lowering tenants' barriers to appeal all contributed to the universally accepted goal of reducing evictions and promoting rental housing stability.

III. REFORM UNLEASHED: THE 2020 GENERAL ASSEMBLY REGULAR SESSION

The November 2019 election changed the House of Delegates to a 55-45

¹²⁷ *Id.* at § 8.01-471.

¹²⁸ *See id.*

¹²⁹ *Id.* at §§ 8.01-470-471.

¹³⁰ *Id.* at § 16.1-107.

¹³¹ 7 *New Laws That Are More Fair, Favorable & Friendly to Tenants*, *supra* note 110.

¹³² *See id.* The constitutionality of Virginia's appeal bond statute was challenged on the basis of *Lindsey v. Normet*, 405 U.S. 56, 56 (1972), which invalidated an Oregon wrongful detainer statute that required an appeal bond equal to twice the value of the rental premises. However, the federal courts upheld Virginia's appeal bond statute that allowed an appeal bond of up to twelve times the monthly rent in *Letendre v. Fugate*, 701 F.2d 1093, 1095 (4th Cir. 1983), *cert. denied*, 464 U.S. 837 (1983).

¹³³ 7 *New Laws That Are More Fair, Favorable & Friendly to Tenants*, *supra* note 1110.

¹³⁴ *Id.*

Democratic majority, and the State Senate to a 21-19 Democratic majority.¹³⁵ The progress in landlord-tenant reforms which started in 2019 continued. Unity among the House of Delegates, the State Senate, and the Governorship accelerated the adoption of new laws that were more fair, favorable, and friendly to tenants. Three took effect on April 22, 2020.¹³⁶ Nine took effect on July 1, 2020.¹³⁷ A thirteenth took effect January 1, 2021, and a fourteenth took effect January 1, 2022.¹³⁸ These reforms are as follows:

A. Ban on Source of Funds Discrimination

Virginia's Fair Housing Law prohibited housing discrimination based on race, color, religion, national origin, sex, family status, elderliness, or disability.¹³⁹ However, a landlord could deny housing because a tenant wanted to use a Housing Choice Voucher or other source of funds to pay all or part of the rent.¹⁴⁰ Virginia was one of the states where households with Housing Choice Vouchers were unprotected by non-discrimination laws.¹⁴¹

Starting July 1, 2020, source of funds, gender identity, sexual orientation, and veteran status were added as four more categories respecting which discrimination in housing is prohibited.¹⁴² There are a few exceptions. The law does not apply to owners of four or fewer rental units in Virginia, or those who own a 10% or less interest in four or fewer units.¹⁴³ The law also does not apply if the source of funds is not approved by the local agency administering a Housing Choice Voucher within fifteen days of submitting the request.¹⁴⁴ Despite this "Mom and Pop" landlord exception, studies show that the percentage of landlords rejecting vouchers has decreased from 77% to

¹³⁵ 2020 Virginia Legislative Session, BALLOTPEDIA (Jan. 8th, 2020), https://ballotpedia.org/2020_Virginia_legislative_session.

¹³⁶ 14 New Laws That Are More Fair, Favorable & Friendly to Tenants, CENT. VA. LEGAL AID SOC'Y, <https://cachcoc.org/wp-content/uploads/2020/11/new-landlord-tenant-laws-v7-2020-CVLAS.pdf>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at § 2.2-3904.

¹⁴⁰ *Id.* at § 36-96.2(i).

¹⁴¹ Nationwide, 65% of voucher holders were unprotected from discrimination based on source of funds. See *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, POVERTY & RACE RESEARCH ACTION COUNCIL 36 (Sept. 2022), <http://www.prrac.org/pdf/AppendixB.pdf>.

¹⁴² VA. CODE ANN. § 36-96.3(a)(1). Virginia joined the following states banning source of funds discrimination: California, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, Wisconsin. See *id.*

¹⁴³ VA. CODE ANN. § 36-96.2(h).

¹⁴⁴ *Id.* at § 36-96.2(j).

just 35% in states with a ban on source of funds discrimination.¹⁴⁵

B. Protecting Status of Domestic Abuse Survivors

Under prior law, landlords did not have to consider a person's status as a domestic abuse survivor when reviewing an application to rent.¹⁴⁶ In many cases, being a survivor of domestic abuse has aftereffects that include a lower credit score.¹⁴⁷ Under this new law, a landlord must consider a person's status as a domestic abuse survivor when reviewing a credit score in a rental application.¹⁴⁸ Survivor status can be shown by a court order, police report, or letter from a sexual and domestic violence program, housing counselor, or attorney.¹⁴⁹ If the landlord violates the law, the survivor can recover actual damages, all amounts paid to the landlord, and attorney's fees.¹⁵⁰

C. Notice to Tenants about Legal Rights

A residential lease is a classic "contract of adhesion," entirely prepared and offered by the party of superior bargaining strength to a consumer of goods or services.¹⁵¹ Previously, residential leases were not required to explain tenant rights.¹⁵² Many tenants did not know basic laws about issues such as evictions, repairs, and security deposits. Under this new law, landlords must offer to tenants entering new or renewed leases a "Statement of Tenant Rights and Responsibilities" posted on the website of the Virginia Department of Housing and Community Development (DHCD).¹⁵³ Separate statements are required for leases under the Virginia Residential Landlord-Tenant Act¹⁵⁴ and for the Virginia Manufactured Home Lot Rental Act.¹⁵⁵ This

¹⁴⁵ Alison Bell, *State, Local Housing Voucher Non-Discrimination Laws May Boost Voucher Acceptance*, CTR. ON BUDGET AND POL'Y PRIORITIES (Oct. 10, 2018), <https://www.cbpp.org/blog/state-local-housing-voucher-non-discrimination-laws-may-boost-voucher-acceptance>.

¹⁴⁶ *14 New Laws That Are More Fair, Favorable & Friendly to Tenants*, *supra* note 136.

¹⁴⁷ *See id.* The phenomenon of "coerced debt" ranges from abusers taking out credit cards in their partners' names without their knowledge, to forcing survivors to obtain loans for the abuser, to tricking survivors into signing a deed for the family home. *See* Angela Littwin, Abstract, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 951 (2012).

¹⁴⁸ VA. CODE ANN. § 55.1-1203(D).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Wex Definitions, *Adhesion Contract (Contract of Adhesion)*, LEGAL INFO. INST. (Dec. 2021), [https://www.law.cornell.edu/wex/adhesion_contract_\(contract_of_adhesion\)](https://www.law.cornell.edu/wex/adhesion_contract_(contract_of_adhesion)).

¹⁵² *See Tenant and Landlord Resources*, VA. DEP'T OF HOUS. AND CMTY. DEV., <https://www.dhcd.virginia.gov/landlord-tenant-resources> (last visited Sept. 19, 2022).

¹⁵³ *Id.*

¹⁵⁴ *See Virginia Statement of Tenant Rights and Responsibilities under the Virginia Residential Landlord and Tenant Act as of July 1, 2022*, VA. DEP'T OF HOUS. AND CMTY. DEV., <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/statement-of-tenant-rights-and-responsibilities-vrlta2022.pdf> (last visited Sept. 20, 2022) (the tenant and landlord must sign the VRLTA and sign acknowledging the tenant has seen and signed the additional rights agreement available on VDHCD website).

¹⁵⁵ *See id.*

statement must be signed by both the landlord and the tenant.¹⁵⁶ A landlord may not sue a tenant in any court for any reason unless this statement has been signed.¹⁵⁷

D. Notice to Subsidized Tenants about Legal Aid

Since at least 1998, Virginia law has required that a public housing authority place on any notice terminating a tenancy the name, address, and phone number of the local legal aid program.¹⁵⁸ This helped protect the most vulnerable tenants. Pursuant to the new law, all subsidized landlords, not just public housing authorities, now must place on any notice terminating a subsidized tenancy (including HUD and LIHTC) the statewide legal aid telephone number (866-534-5243) and website address (<https://www.valegalaid.org>).¹⁵⁹ Without this information, the notice is not effective and is not sufficient to allow a landlord to terminate any subsidized tenancy.¹⁶⁰

E. Notice to Public Housing Tenants of Intent to Demolish

In 2016, the Richmond Redevelopment and Housing Authority (RRHA)—the largest public housing authority in Virginia—announced a plan to demolish the “Big Six” public housing communities¹⁶¹ and replace them with “mixed income” housing, beginning with Creighton Court.¹⁶² The law did not require a public housing authority (PHA) to notify tenants when they intended to demolish or dispose of housing.¹⁶³ This kept vulnerable tenants from being able to plan ahead.¹⁶⁴

Under the new law, with delayed implementation of six months, as of January 1, 2021, a PHA that wishes to demolish or dispose of housing must give twelve months’ advance notice to Virginia Housing (formerly Virginia Housing Development Authority), to each individual tenant, and to any agency giving rental assistance to tenants who would be displaced before filing a

¹⁵⁶ VA. CODE ANN. § 55.1-1204(B).

¹⁵⁷ *Id.* at § 55.1-1204(H).

¹⁵⁸ H.D. 830, 1998 Gen. Assemb., Reg. Sess. (Va. 1998) (codified at VA. CODE ANN. § 55.1-1202(D)).

¹⁵⁹ VA. CODE ANN. § 55.1-1202(D).

¹⁶⁰ *Id.*

¹⁶¹ Mark Robinson, *To Live and Die in Creighton Court*, RICHMOND MAG. (Jul. 28, 2016), <https://richmondmagazine.com/news/features/creighton-court>; *Communities*, RICHMOND REDEVELOPMENT AND HOUS. CMTY., <https://www.rrha.com/housing/communities> (showing the “Big Six” housing communities: Creighton Court (504 units), Fairfield Court (447 units), Gilpin Court (781 units), Hillside Court (402 units), Mosby Court (458 units), and Whitcomb Court (447 units)).

¹⁶² *Id.*

¹⁶³ See George Copeland Jr., *RRHA Changes Rankle Residents, Activists who Are Most Impacted*, RICHMOND FREE PRESS (Sept. 27, 2019), <https://richmondfreepress.com/news/2019/sep/27/rrha-changes-rankle-residents-activists-who-are-mo/>.

¹⁶⁴ Lack of transparency, accessibility, and accountability has been a major complaint voiced by RRHA tenants at Creighton Court. See *id.*; see also Robinson, *supra* note 161.

demolition application with HUD.¹⁶⁵ The notice must state (1) the expected date an application to demolish or dispose will be given to HUD; (2) the name, address, and phone number of the local legal aid program; (3) instructions on how to get more information about the application and timeline; and (4) instructions on how to give written comments to the PHA about the demolition or disposal.¹⁶⁶ During this twelve-month period, the PHA cannot increase rent, change leases, or evict residents except as otherwise allowed by law.¹⁶⁷ The PHA still must provide a ninety-day notice before actual displacement of tenants under 42 U.S.C. §1437p(a)(4)(A).¹⁶⁸

F. Security Deposit Insurance

Under Virginia law, a landlord may charge a security deposit of up to two months' rent.¹⁶⁹ The cash crunch of compiling two months' rent for this security deposit was a barrier to many tenants who wished to move.¹⁷⁰ Under the new law, landlords may allow tenants to provide security deposit insurance and pay small monthly insurance premiums for all or part of the security deposit requirement.¹⁷¹ This makes it easier for tenants to move from one rental unit to another. The insurance company must meet the following criteria: (1) be licensed by the State Corporation Commission; (2) allow payment of premiums on a monthly basis; (3) provide coverage effective for the entire lease term; (4) provide coverage of no less than the amount the landlord requires for the security deposit; and (5) notify the landlord within ten days if the policy is cancelled or lapses.¹⁷²

G. Limits on Late Fees

Under Virginia law, late fees are generally limited to 5% of the amount of an installment payment paid on a periodic basis such as weekly or monthly.¹⁷³ However, this limit applies only to lenders or sellers, not to landlords.¹⁷⁴ Previously, there was no statutory limit on the amount of late fees a landlord could charge in a residential landlord-tenant lease.¹⁷⁵ This could result in cascading late fees, where a late fee was charged each month that a balance was

¹⁶⁵ VA. CODE ANN. § 36-7.2(A), (D).

¹⁶⁶ *Id.* at § 36-7.2(C).

¹⁶⁷ *Id.* at § 36-7.2(E).

¹⁶⁸ 42 U.S.C. § 1437p(4)(A).

¹⁶⁹ VA. CODE ANN. § 55.1-1204(C)(6).

¹⁷⁰ Diane Bernard, *Bill Aims to End 'Cash Crunch' of VA Rental Security Deposits*, PUB. NEWS SERV. (Jan. 24, 2020), <https://www.publicnewsservice.org/2020-01-24/housing-homelessness/bill-aims-to-end-cash-crunch-of-va-rental-security-deposits/a68982-1>.

¹⁷¹ VA. CODE ANN. § 55.1-1226(I-J).

¹⁷² *Id.* at §§ 55.1-1220(I)(1)-(5).

¹⁷³ *Id.* at § 6.43-400(B).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at § 55.1-1204(E).

due, even if full payment was made that month and the overdue balance carried over from the prior month.¹⁷⁶

Under the new law—with an emergency implementation date of April 22, 2020—a landlord may charge a late fee of 10% of the periodic (monthly or weekly) rent, or 10% of the remaining balance due and owed, whichever is smaller, and only if the late fee is provided for in the written lease agreement or under the default lease provision of Code of Virginia §55.1-1204(C)(5).¹⁷⁷ If the rent is subsidized, the late fee applies only to the portion of the rent paid by the tenant.¹⁷⁸

H. Repair and Deduct

Under prior law, tenants had only one way to obtain repairs: they had to be current in rent, give written notice of needed repairs to the landlord, and wait a reasonable period of time for repairs to be made.¹⁷⁹ If repairs were not made, they had to pay their next month's rent to the court and file a Tenant's Assertion.¹⁸⁰ This process is often lengthy. The statute does not set forth the "reasonable period of time" other than to specify that more than thirty days is presumptively unreasonable.¹⁸¹ The lawsuit must be filed within five days of the rent due date.¹⁸² Unless the tenant provided written notice early in the month, the tenant could not pay rent into court and file the Tenant's Assertion the next month, but rather had to wait until the month after that.¹⁸³ Once filed, the tenant must wait fifteen days for a hearing.¹⁸⁴ For non-emergency conditions, a tenant using the Tenant's Assertion must wait at least five weeks to even get a court hearing.¹⁸⁵

Starting July 1, 2020, tenants have another way to get repairs that is less burdensome. They can give written notice of needed repairs to the landlord and wait fourteen days.¹⁸⁶ If repairs are not started within the fourteen days, they can contract with a licensed contractor or pesticide business to get the

¹⁷⁶ *New Virginia laws limit rent late fees, delay evictions*, WFC REPORT (May 20, 2020), <https://wfcreport.com/2020/05/20/new-virginia-laws-limit-rent-late-fees-delay-evictions>.

¹⁷⁷ VA. CODE ANN. § 55.1-1204(E) (2020).

¹⁷⁸ *Id.*

¹⁷⁹ *See Repairs and Maintenance of Rental Property*, Va. Legal Aid Society, Inc., VA. LEGAL AID, <https://www.valegalaid.org/resource/getting-repairs> (last visited Jan. 28, 2019).

¹⁸⁰ *Id.*

¹⁸¹ VA. CODE ANN. § 55.1-1244(B) (2022).

¹⁸² *Id.* at § 55.1-1244(D).

¹⁸³ *Id.* at § 55.1-1244 (F).

¹⁸⁴ *Id.*

¹⁸⁵ The five week figure is derived by adding the twenty-one days of the required notice before the Tenant's Assertion is filed to the fifteen days a tenant must wait to get a hearing after the Tenant's Assertion is filed.

¹⁸⁶ *Getting Repairs*, CENT. VA. LEGAL AID SOC'Y, <http://cvlas.org/wp-content/uploads/2020/11/repairs-2020.pdf> (last visited Sept. 19, 2022).

needed work done.¹⁸⁷ The cost cannot be more than \$1,500 or one month's rent, whichever is higher.¹⁸⁸ The tenant can deduct the cost of the repairs from the rent by giving the landlord an itemized statement of the work and a receipt showing payment.¹⁸⁹ This method, "Repair and Deduct," is not available if the tenant caused the condition, denied access to the premises, or the condition was remedied by the landlord prior to the tenant's contract with a third party. The law is designed to protect tenants from slumlord practices.¹⁹⁰

I. Relief to Tenants and Homeowners Due to a Federal Government Shutdown

Because Virginia borders Washington, D.C., it is home to many federal workers and contractors, and leads the nation in federal dollars per capita lost from a shutdown. Among all states, Virginia is sixth most affected by federal government shutdowns.¹⁹¹ The most recent federal government shutdown in a dispute over \$5.7 billion in border wall funding lasted thirty-five days from December 21, 2018 through January 24, 2019, which was the longest in history.¹⁹² During such a federal government shutdown, people unable to pay their rent or mortgage because of the shutdown did not get any extra help.¹⁹³ This caused unneeded hardship for tenants and homeowners who were behind on their rent or mortgage through no fault of their own.

As a result, House Bill 340 was introduced into the 2020 Virginia General Assembly to provide relief for such tenants and homeowners.¹⁹⁴ A closing of the federal government for fourteen or more days triggers these protections, which apply to federal employees, contractors for the federal government, and employees of a contractor for the federal government.¹⁹⁵ If a landlord sues to evict for nonpayment of rent due after the start of a federal shutdown, the tenant not receiving pay due to the shutdown can get the case postponed for sixty days.¹⁹⁶ Similarly, if a homeowner of a one to four family residential unit defaults on a mortgage and is subject to foreclosure after the start of a

¹⁸⁷ VA. CODE ANN. § 55.1-1244.1(C) (2022).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Tyler Arnold, *Virginia One of Most Affected States by Federal Government Shutdown*, THE CENTER SQUARE (Jan. 4, 2019), https://www.thecentersquare.com/virginia/virginia-one-of-most-affected-states-by-federal-government-shutdown/article_e94cb12e-0fae-11e9-a103-9ff014f8cb73.html.

¹⁹² Andrew Restuccia, et al., *Longest Shutdown in History Ends After Trump Relents On Wall*, POLITICO (Jan. 25, 2019), <https://www.politico.com/story/2019/01/25/trump-shutdown-announcement-1125529>.

¹⁹³ Annie Nova, *Rent, Mortgage Payments Hard to Meet for Workers Entangled in the Government Shutdown*, CNBC (Jan. 4, 2019), <https://www.cnbc.com/2019/01/04/government-shutdown-can-make-rent-mortgage-payments-hard-to-meet-.html>.

¹⁹⁴ H.D. 340, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

federal shutdown, the homeowner can get the foreclosure stopped for thirty days.¹⁹⁷ The tenant must provide written proof in court that they are not being paid due to the shutdown, and the homeowner must provide such proof to the lender. The tenant or homeowner can utilize this option up to ninety days after the shutdown ends.¹⁹⁸

The bill passed the House of Delegates by a margin of 65-34 on February 3, 2020, passed the State Senate by a margin of 39-1 on February 24, 2020, and was relayed to then-Governor Ralph Northam on March 6, 2020 for action by April 11, 2020.¹⁹⁹ As noted *supra*, six days later the Governor declared a State of Emergency on March 12, 2020—the final day of the Regular Session of the Virginia General Assembly—due to the COVID-19 pandemic.²⁰⁰ The following discussion will explore the Governor's recommendation, which added a second section to HB 340 to expand these protections to tenants and homeowners affected by COVID-19.²⁰¹

J. Relief to Tenants and Homeowners Affected by COVID-19

As with the rest of the nation, the COVID-19 pandemic had an immediate and devastating financial impact upon the citizenry. To take just one example, there were 306,143 unemployment claims filed in Virginia during the weeks of March 21, March 28, and April 4, 2020.²⁰² The claims from these three weeks equaled all of the previous claims from 2017, 2018, and 2019 combined.²⁰³ As a result, on April 11, 2020, the Governor proposed an amendment in the nature of a substitute to House Bill 340, under which the protections given to tenants and homeowners affected by a federal government shutdown also would be given to tenants and homeowners affected by COVID-19.²⁰⁴ “Affected by COVID-19” meant any loss of income due to the COVID-19 state of emergency.²⁰⁵ The COVID-19 state of emergency started

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *HB 340 Emergency Laws; Civil Relief, Citizens of the Commonwealth Furloughed*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=HB340> (last visited Sept. 11, 2022).

²⁰⁰ Press Release, Former Va. Governor Ralph Northam, Governor Northam Declares State of Emergency, Outlines Additional Measures to Combat COVID-19 (Mar. 12, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-853537-en.html>.

²⁰¹ *HB. 340 Amendment in the Nature of a Substitute (Proposed by the Governor on April 11, 2020)*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB340H1> (last visited Sept. 11, 2022).

²⁰² Press Release, Va. Emp. Comm'n, Virginia's Unemployment Insurance Weekly Claims for Week Ending April 4th (Apr. 9, 2020), <https://www.vec.virginia.gov/node/11807>.

²⁰³ *Id.*

²⁰⁴ *HB 340 Amendment in the Nature of a Substitute (Proposed by the Governor on April 11, 2020)*, *supra* note 201.

²⁰⁵ *Id.*

March 12, 2020 and ended June 30, 2021.²⁰⁶ “Affected by COVID-19” also meant an individual was not getting wages or payments from a public or private source which previously were being received.²⁰⁷

Under the amendment in the nature of a substitute to House Bill 340, if a landlord sued to evict for nonpayment of rent that was unpaid during the COVID-19 state of emergency, a tenant could get the case postponed for sixty days.²⁰⁸ The tenant was required to come to court and give written proof of not getting wages or payments.²⁰⁹ “Written proof” meant a pay stub showing zero dollars in earnings for a pay period during the COVID-19 state of emergency, or a copy of a furlough letter or letter showing the person was a nonessential employee due to the COVID-19 state of emergency, or any other appropriate documentation.²¹⁰ This protection for tenants ended on September 28, 2021, ninety days after the COVID-19 state of emergency ended.²¹¹

In addition, if a homeowner of a one to four family residential unit defaulted on a mortgage and was subject to foreclosure due to loss of income because of the COVID-19 state of emergency, the homeowner could get the foreclosure stopped for thirty days.²¹² The homeowner was required to give to the lender the same type of written proof of not getting wages or payments.²¹³ This protection for homeowners also ended on September 28, 2021.²¹⁴ The amendment in the nature of a substitute to House Bill 340 passed the House of Delegates 57-37, passed the State Senate 40-0, and was signed by the Governor on April 22, 2020 as emergency legislation to be effective immediately.²¹⁵

K. Ex Parte Orders if Tenant Unlawfully Excluded

Without a court order, landlord lockouts, self-help evictions, and utility cutoffs are unlawful.²¹⁶ The tenant’s remedy is to file a Tenant’s Petition for

²⁰⁶ Ida Domingo, *Virginia’s COVID-19 State of Emergency to End June 30*, ABC 13 NEWS (June 30, 2021), <https://wset.com/news/coronavirus/virginias-covid-19-state-of-emergency-end-june-30-pandemic>.

²⁰⁷ *HB 340 Amendment in the Nature of a Substitute (Proposed by the Governor on April 11, 2020)*, *supra* note 201.

²⁰⁸ H.D. 340(1)(B), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²⁰⁹ *Id.*

²¹⁰ H.D. 340(1)(A), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²¹¹ H.D. 340(4), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²¹² H.D. 340(1)(D), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²¹³ H.D. 340(1)(B), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²¹⁴ H.D. 340(1)(D), 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²¹⁵ *HB 340 Emergency Laws; Civil Relief, Citizens of the Commonwealth Furloughed*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=HB340> (last visited Sept. 11, 2022).

²¹⁶ Va. Code Ann. § 55.1-1252 (2019).

Relief from Unlawful Exclusion.²¹⁷ This allows the tenant to get an order to recover possession, resume the utility, actual damages, and attorney's fees.²¹⁸ However, the tenant previously could do so only after the petition was served on the landlord.²¹⁹ Under the new law, a tenant can get temporary relief even if the landlord has not been served, and even if the landlord is not in court.²²⁰ The tenant must have made a good faith effort to notify the landlord of the filing of the petition and the hearing.²²¹

L. Expunging Dismissed Eviction Lawsuits in General District Court

Under prior law, an eviction lawsuit filed in court stays on the court record for at least ten years, even if the lawsuit is dismissed.²²² This record can harm tenants seeking rental housing in the future.²²³ Under the new law—with delayed implementation of eighteen months—as of January 1, 2022, if an eviction lawsuit is dismissed or nonsuited, the tenant can file a petition to expunge the court record.²²⁴ The Supreme Court of Virginia developed a form for tenants to use which specifies the date the order of dismissal or nonsuit was entered, the address of the property at issue, and the name of the plaintiff in the unlawful detainer.²²⁵ Upon a finding that the unlawful detainer was dismissed, the court—without a hearing—must enter an order requiring expungement of the court record.²²⁶

M. Notice of Sale to Mobile Home Park Residents

Under prior law, if there was a planned change in the use of a mobile home park, the owner had to give the residents 180 days' advance written notice.²²⁷ The residents had no legal right to get any information about the proposed

²¹⁷ *Id.* at § 55.1-1243.1.

²¹⁸ Va. Code Ann. § 55.1-1243.1(D) (2022); *see also* Va. Jud. Sys., *Tenant's Petition for Relief from Unlawful Exclusion*, <https://www.vacourts.gov/forms/district/dc431.pdf> (last visited Sept. 21, 2022) (specifying options for relief).

²¹⁹ *See* Va. Code Ann. §§ 8.01-296 (2008) (stating that Virginia law allows service of process by personal service, substituted service, or posting and mailing); *see also* Va. Code Ann. 8.01-329 (2021) (stating that Virginia law also allows service of process through the Secretary of the Commonwealth if none of the other three methods are effectuated).

²²⁰ VA. CODE ANN. § 55.1-1243.1(C) (2021).

²²¹ *Id.*

²²² *Id.* at §16.1-69.55, at (B)(1), (B)(6).

²²³ *See* Deutsche Welle, *How Poor People Survive in the USA*, YOUTUBE (Nov. 27, 2019), <https://www.youtube.com/watch?v=JHDkALRz5Rk> (showing how landlords can find prospective tenants' prior unlawful detainers, thus harming their future renting prospects and providing examples of Richmond, Virginia tenants who have had difficulty finding housing because of this issue).

²²⁴ *See* VA. CODE ANN. § 8.01-130.01(A) (2020) (stating that if the lawsuit is dismissed, the tenant must wait until the thirty-day period to request a reopening under § 16.1-97.1 has passed and that if the eviction lawsuit is nonsuited the tenant must wait until the six-month period to refile under § 8.01-380 has passed).

²²⁵ *Id.* at § 8.01-130.01(B).

²²⁶ *Id.*

²²⁷ *Id.* at § 55.1-1308(B), (*repealed by* VA. CODE ANN § 55.1-1308.2(A) (2020)).

sale of the park, have any opportunity to purchase the mobile home park, or receive any moving expenses.²²⁸ Starting July 1, 2020, a mobile home park owner who wants to sell the park must give ninety days' advance written notice of the proposed sale to each resident and to the Department of Housing and Community Development (DHCD) for posting on its website.²²⁹ If the park owner gets an offer to purchase, the owner must give sixty days' advance written notice of that offer to each resident and to DHCD for posting on its website.²³⁰ During those sixty days, the park owner must consider offers from a resident group representing at least 25% of the park residents.²³¹ Also, under prior law, a mobile home park resident who had been evicted from the mobile home park had only ninety days to move or sell the mobile home, and could not rent it to a tenant.²³² Starting July 1, 2020, a mobile home park resident who has been evicted from the mobile home park may rent the mobile home to a tenant who will pay lot rent to the park owner, and mobile home rent to the owner of the mobile home.²³³

N. Relocation Expenses to Mobile Home Park Residents

Moving a “mobile” home is a massive and pricey undertaking which can cost anywhere between \$700 and \$14,000, depending on the distance of the move, the size and weight of the mobile home, and any required permits and inspections.²³⁴ Under the new law, a mobile home park owner who wants to sell or redevelop the park for another use must, within the 180-day period referenced supra, give each resident \$2,500 in relocation expenses.²³⁵ In Planning District 8 (most of northern Virginia), this amount is \$3,500.²³⁶ Relocation expenses are subject to an agreement between the owner and resident that the resident will remove the home from the park.²³⁷

These fourteen landlord-tenant reforms were historic. Never before since

²²⁸ *Solving the Mobile Home Park Problem*, VA. POVERTY L. CTR. (Apr. 11, 2019), solving-the-mobile-home-park-problem.

²²⁹ VA. CODE ANN. § 55.1-1308.2(A) (2020).

²³⁰ *Id.* at § 55.1-1308.2(B) (2022); see also *Manufactured Housing*, VA. DEP'T OF HOUS. & CMTY. DEV., <https://www.dhcd.virginia.gov/mh> (last visited Sept. 9, 2022) (listing both the statutory requirements of Notice of Intent to Sell and the Notice of Purchase Offer).

²³¹ VA. CODE ANN. § 55.1-1308.2(B) (2020).

²³² *Id.* at § 55.1-1316(A).

²³³ *Id.* at § 55.1-1316(B) (2020); *Manufactured Home Lot Rental Act- 2021*, CENT. VA. LEGAL AID SOC'Y, <https://cvlas.org/wp-content/uploads/2021/09/mobile-home-lot-rental-2021.pdf> (last visited Sept. 11, 2022).

²³⁴ Marian White, *The Cost of Moving a Mobile Home - What You Can Expect to Pay*, MOVING.COM (July 29, 2022), <https://www.moving.com/tips/moving-mobile-home-expect-pay/>.

²³⁵ VA. CODE ANN. § 55.1-1308.1 (2020).

²³⁶ *14 New Laws That Are More Fair, Favorable & Friendly To Tenants*, LEGAL SERVICES OF N. VA., <https://www.novahousingexpo.org/images/virtual/LSNVnewlandlordtenantlawsv42020.pdf> (last visited Sept. 11, 2022).

²³⁷ VA. CODE ANN. § 55.1-1308.1 (2020).

the enactment of the VRLTA in 1974 had so many reforms beneficial to tenants been enacted in a single General Assembly session.²³⁸ Banning housing discrimination based on source of funds not only benefited holders of Housing Choice Vouchers to move to areas of opportunity, but also, as previously noted, made it illegal for landlords to refuse to accept funds from the Virginia Rent Relief Program, an emergency public health measure designed to limit the spread of COVID-19 through promoting housing stability by paying past due rent to landlords in full.²³⁹ The ban on source of funds discrimination also provided another defense to eviction against landlords who refused to mitigate their damages as required under Virginia law.²⁴⁰ Limiting late fees which reduced housing costs to tenants, providing tenants the additional tool of Repair and Deduct as another remedy for poor housing conditions, and allowing the expungements of dismissed or nonsuited eviction lawsuits all furthered housing stability.

IV. RESPONSE TO COVID-19: THE 2020 GENERAL ASSEMBLY SPECIAL SESSION

Due to the COVID-19 pandemic, the Governor of Virginia declared a state of emergency in the Commonwealth on March 12, 2020.²⁴¹ The President of the United States declared a nationwide state of emergency on March 13, 2020.²⁴² The Chief Justice of the Supreme Court of Virginia declared a state of judicial emergency on March 16, 2020 due to the ongoing public health emergency.²⁴³ Among other requirements, the judicial emergency order postponed all non-emergency cases, limited courtroom attendance, and

²³⁸ See *VA General Assembly and Governor Approve New COVID-19 Legislation*, VA. REALTORS, <https://virginiarealtors.org/2020/11/12/va-general-assembly-and-governor-approve-new-covid-19-legislation/> (last visited Sept. 11, 2022) (describing some of these beneficial reforms).

²³⁹ Martin Wegbreit, *Evictions in Virginia: From Crisis To Solutions - October 2021*, CENT. VA. LEGAL AID SOC'Y, <https://lmronline.org/wp-content/uploads/2021/10/MW-Evictions-Crisis-1.pdf> (last visited Sept. 11, 2022); *Virginia Rent Relief Program*, VA. DEP'T OF HOUS. AND CMTY. DEV., <https://www.dhcd.virginia.gov/rmrp> (last visited Sept. 11, 2022).

²⁴⁰ *Hannan v. Dusch*, 153 S.E.2d 824, 824 (1930); VA. CODE ANN. § 36-96.3 (2021); VA. CODE ANN. § 55.1-1251 (2020).

²⁴¹ Governor Ralph Northam declared Virginia to be in a State of Emergency from March 12, 2020 which lasted through June 30, 2021. Press Release, Former Va. Governor Ralph Northam, Governor Northam Declares State of Emergency, Outlines Additional Measures to Combat COVID-19 (Mar. 12, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-853537-en.html>.

²⁴² *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, THE WHITE HOUSE, (Mar. 13, 2020) <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

²⁴³ *In re: Fortieth Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency*, SUP. CT. OF VA., https://www.vacourts.gov/news/items/covid2022_0527_scv_order_fortieth_extending_declaration_of_judicial_emergency.pdf (May 27, 2022).

required social distancing in the courthouse. In interpreting the judicial emergency order of the Supreme Court of Virginia, the Office of the Attorney General of Virginia and the Office of the Executive Secretary both opined that such order applied to evictions.²⁴⁴

Housing stability became even more crucial during the public health emergency of the COVID-19 pandemic when containment and treatment relied on individuals staying indoors and not being forced to seek shelter elsewhere or experience homelessness.²⁴⁵ Due to the pandemic, Virginia's Rent and Mortgage Relief Program (RMRP) started on June 29, 2020, as one of the first such programs in the nation, initially funded with \$50 million in CARES Act monies²⁴⁶ and later supplemented with additional state and federal funds to a total of more than \$1 billion.²⁴⁷ Additionally, on August 18, 2020, the Virginia General Assembly began a Special Session which lasted until October 16, 2020.²⁴⁸ The three main purposes of the Special Session were to address the forecasted budget shortfall due to the impact of the COVID-19 shutdown on state finances, address other impacts directly associated with COVID-19, and address ongoing calls for social and criminal justice reforms in light of the murder of George Floyd and the resulting protests.²⁴⁹ During the three-month long Special Session, legislators also turned their attention to the eviction crisis. Some new tenant protections were contained in the Budget Bill, while others were statutory enactments with sunset dates.²⁵⁰ These protections are as follows:

²⁴⁴ Legal Mechanisms that Bar Evictions Across Va. During the COVID-19 Pandemic, OP. VA. ATT'Y GEN. 20-033 (July 15, 2020), <https://www.oag.state.va.us/files/Opinions/2020/20-033-Price-et-al.pdf>; Memorandum from Karl R. Hade, Exec. Sec'y, Va., to Active and Retired Circuit Court Judges and Active and Retired District Court Judges (May 15, 2020), https://www.va-courts.gov/news/items/covid/2020_0515_unlawful_detainers_and_writs_of_eviction.pdf.

²⁴⁵ See *Housing Insecurity and the COVID-19 Pandemic*, CONSUMER FIN. PROT. BUREAU 1, 3 (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf (noting that families who faced housing insecurity also faced difficulty in complying with quarantine and social distancing).

²⁴⁶ Press Release, Former Va. Governor Ralph Northam, Governor Northam Launches Rent and Mortgage Relief Program to Assist Virginians Facing Eviction or Foreclosure (June 29, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/june/headline-858911-en.html>.

²⁴⁷ *Virginia Rent Relief Program Application Portal Closure Frequently Asked Questions*, VA. DEP'T HOUS. & CMTY. DEV., <https://www.dhcd.virginia.gov/virginia-rent-relief-program-rrp-application-portal-closure-frequently-asked-questions-faqs> (last visited Sept. 5, 2022).

²⁴⁸ Gregory S. Schneider & Laura Vozzella, *Virginia General Assembly Wraps Up Marathon Session with Votes on Budget, Police Oversight Bills*, WASH. POST (Oct. 16, 2020), https://www.washingtonpost.com/local/virginia-politics/virginia-special-session-ending/2020/10/16/940e14c4-0f29-11eb-b1e8-16b59b92b36d_story.html.

²⁴⁹ *Id.*

²⁵⁰ See *2020 Special Session Wrap-up*, VA. HOUS. ALL., <https://vahousingalliance.org/wp-content/uploads/VHA-Special-Session-2020-Legislative-Wrap-Up.pdf> (last visited Sept. 5, 2022) (explaining some of the housing funding measures taken during the 2020 regular session).

A. The Budget Bill (HB 5005).

Because Virginia had established one of the first rent relief programs in the country, the General Assembly enacted requirements that the program be utilized before a landlord could proceed to a judgment of possession and a Writ of Eviction due to nonpayment of rent.²⁵¹ In the Additional Enactments section of the Budget Bill §§8(a) and 8(b), the General Assembly set forth requirements to be in effect through December 31, 2020, as well as requirements to be in effect from January 1 through June 30, 2021.²⁵² Tenant protections in effect from the Budget Bill's adoption on November 18 through December 31, 2020—applicable to all landlords—required the provision of a written fourteen-day nonpayment notice including the amount owed, information about the Virginia RMRP, and information about how to reach 2-1-1 Virginia for other rental assistance programs.²⁵³

The landlord could not take any action to obtain possession of a dwelling unit for nonpayment of rent unless the tenant refused to apply for RMRP and/or refused to cooperate with the landlord in applying for RMRP.²⁵⁴ For large landlords (defined as those owning five or more rental units) the written fourteen-day nonpayment notice was also required to offer the tenant a payment plan.²⁵⁵ That plan would allow the tenant to pay the total amount due, less late fees, in equal monthly payments over six months or the time remaining under the lease, whichever was less.²⁵⁶

Tenant protections in effect from January 1 through June 30, 2021 (the end of the Fiscal Year 2021 budget) required the same written fourteen-day nonpayment notice with the same information set forth supra.²⁵⁷ However, in a major change, the landlord now was required to apply for RMRP on behalf of the tenant during the fourteen-day period, unless the tenant informed the landlord within the fourteen-day period that the tenant was applying for

²⁵¹ As noted in an August 3, 2021, editorial in the Richmond Times-Dispatch: “With so much in available funds, no tenant in Virginia should be evicted for nonpayment of rent until after the last dollar has been spent.” See Chris Gentilviso, *Editorial: We've Raised Awareness for the Need for a Living Wage. What About a Living Rent?*, RICHMOND TIMES-DISPATCH (Aug. 4, 2021), https://richmond.com/opinion/editorial/editorial-we-ve-raised-awareness-of-the-need-for-a-living-wage-what-about-a/article_8360f8b8-8d48-518f-b5fe-d4d54668560d.html (noting that “[w]ith so much in available funds, no tenant in Virginia should be evicted for nonpayment of rent until after the last dollar has been spent”).

²⁵² An Act to Amend and Reenact Chapter 1289 of the 2020 Acts of Assembly, H.D. 5005, Ch. 56, 2020 Sp. Sess. I (Va. 2020), <https://budget.lis.virginia.gov/get/budget/4283/HB5005>.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

RMRP.²⁵⁸ Once the RMRP application was submitted, the landlord could not take any action to obtain possession of a dwelling unit for nonpayment of rent unless one of four conditions were applicable:

- The tenant refused to apply for RMRP and/or refused to cooperate with the landlord in applying for the RMRP;
- The application was denied because the tenant was ineligible for rent relief;²⁵⁹
- RMRP was not approved within forty-five days after submission of the application; or
- RMRP had run out of money.²⁶⁰

For large landlords, the Budget Bill also maintained the requirement of an offer of a payment plan in the written fourteen-day nonpayment notice during the January 1 through June 30, 2021 period.²⁶¹

B. Senate Bill 5088

Code of Virginia § 55.1-1245 added a fourteen-day nonpayment notice for all landlords and a requirement to offer a payment plan for large landlords, with an expiration date of June 30, 2021.²⁶² Senate Bill 5088 was emergency legislation which took effect immediately upon signature by the Governor on November 9, 2020.²⁶³ As a result of these and other measures, in the fourth quarter of 2020, eviction judgments were 19% of pre-pandemic eviction judgments, and eviction filings were 37% of pre-pandemic eviction filings. In the first quarter of 2021, eviction judgments were 10% of pre-pandemic eviction judgments, and eviction filings were 11% of pre-pandemic eviction

²⁵⁸ See *id.* Virginia was one of only five state or local jurisdictions—including California, Connecticut, and Philadelphia—to require a landlord to apply for rent relief before filing for eviction. See JADE VASQUEZ ET AL., TENANT PROTECTION AND EMERGENCY RENTAL ASSISTANCE DURING AND BEYOND THE COVID-19 PANDEMIC 5 (2022).

²⁵⁹ An Act to Amend and Reenact Chapter 1289 of the 2020 Acts of Assembly, *supra* note 252. Grounds for denial of rent relief in Virginia were limited and included household income above 80% of area median income (AMI), rent at or above 150% of area fair market rent (FMR), or no financial hardship (loss of income or increase in expenses) due to and during the COVID-19 pandemic. See *Virginia Rent Relief Program (RRP) Application Portal Closure Frequently Asked Question (FAQs)*, *supra* note 247.

²⁶⁰ An Act to Amend and Reenact Chapter 1289 of the 2020 Acts of Assembly, *supra* note 252. Rent relief applications in Virginia closed at 11:59 p.m. on May 15, 2022. *Virginia Rent Relief Program*, *supra* note 248. Through March 31, 2022, rent relief had processed 141,330 payments for nearly 105,000 households, totaling more than \$713 million. Dean Mirshahi, *Virginia Rent Relief Program Closing to New Applicants in May*, WRIC NEWS (Apr. 22, 2022), <https://www.wric.com/news/virginia-news/virginia-rent-relief-program-operating-on-first-come-first-served-basis-before-closing-to-new-applicants-in-may/>.

²⁶¹ An Act to Amend and Reenact Chapter 1289 of the 2020 Acts of Assembly, *supra* note 252.

²⁶² S. 5088, Ch. 54, 2020 Gen. Assemb., Sp. Sess. I (Va. 2020).

²⁶³ *Id.*

filings.²⁶⁴ Maintaining housing stability during the public health emergency of the COVID-19 pandemic largely was achieved.

C. House Bill 5106

As noted, an eviction lawsuit filed in court stays on the court records for at least ten years, unless expunged under Code of Virginia § 8.01-130.01, which took effect January 1, 2022.²⁶⁵ A tenant screening report, especially one with an eviction judgment on it, can make it difficult for a tenant to obtain future rental housing.²⁶⁶ Under House Bill 5106—with an emergency effective date of March 1, 2021—large landlords owning five or more rentals cannot take any adverse action against an applicant for tenancy based solely on payment history or an eviction for non-payment of rent occurring from the start of the COVID-19 state of emergency on March 12, 2020 through thirty days after the end of the COVID-19 state of emergency, June 30, 2021—i.e., through July 30, 2021.²⁶⁷

Covered landlords were required to provide a written notice of denial to include a statement of the right to contest the denial, the statewide legal aid telephone number and website, and the right to appeal the denial within seven days from the postmark date, or by the close of the next business day if the denial were sent by electronic or telephonic means.²⁶⁸ If the landlord relied on a tenant screening report, the landlord was required to make a good faith effort to get more information from the tenant screening agency.²⁶⁹ In addition, if the landlord violated the law, the applicant could recover \$1,000 in statutory damages and attorney's fees.²⁷⁰

By being one of only five state or local jurisdictions to require a landlord to apply for rent relief before filing for eviction, Virginia was aggressively trying to reduce evictions.²⁷¹ Although shame and embarrassment put

²⁶⁴ RVA Eviction Lab Staff, *Quarterly Data Report 1st Quarter 2021: January to March*, RVA EVICTION LAB 4 (APR. 23, 2021), https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2021/04/RVAEL_2021-Q1-data-report.pdf.

²⁶⁵ VA. CODE ANN. § 16.1-69.55(B)(2) (2006); The Fair Credit Reporting Act (FCRA) contains a seven-year limit for an eviction judgment to remain on a credit report. *How Long Can Information, Like Eviction Actions and Lawsuits, Stay on My Tenant Screening Record?*, CONSUMER FIN. PROT. BUREAU (July 1, 2021), <https://www.consumerfinance.gov/ask-cfpb/how-long-can-information-like-eviction-actions-and-lawsuits-stay-on-my-tenant-screening-record-en-2104/>.

²⁶⁶ Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times*, CONSUMER REPORTS (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>.

²⁶⁷ H.D. 5106, 2020 Gen. Assemb., Spec. Sess. I (Va. 2020).

²⁶⁸ VA. CODE ANN. § 55.1-1245(I)(2) (2022).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ JADE VASQUEZ ET AL., NATIONAL LOW INCOME HOUSING COALITION, TENANT PROTECTIONS AND EMERGENCY RENTAL ASSISTANCE DURING AND BEYOND THE COVID-19 PANDEMIC 5 (2022).

Virginia on the course to stronger tenant protections, Virginia excelled in making up lost ground. In the first half of 2021, Virginia distributed a higher percentage of rent relief funds than any other state and was second only to Texas in total dollars dispersed.²⁷²

V. REFORMS CONTINUE: THE 2021 GENERAL ASSEMBLY REGULAR SESSION

In 2021, Virginia remained one of the fifteen Democratic state government trifectas with a 21-18 majority in the State Senate, a 55-45 majority in the House of Delegates, and the Governorship.²⁷³ Due to the extraordinary issues which arose from the COVID-19 pandemic, Virginia Delegates and State Senators faced limits on the number of bills which they could introduce during the forty-five-day “short session.”²⁷⁴ Even with these limitations, four additional tenant protections either were added or extended to further deal with the pandemic and make it easier for tenants to stay stably housed and mitigate the spread of COVID-19. These protections are as follows:

A. Families Get More Time to Pay Rent and Stay Housed

As noted supra, during the General Assembly 2020 Special Session, Senate Bill 5088 amended Code of Virginia § 55.1-1245 to require a fourteen-day nonpayment notice for all landlords and require that large landlords with five or more rental units offer a payment plan as part of the notice.²⁷⁵ As enacted, Senate Bill 5088 had an expiration date of June 30, 2021.²⁷⁶ Due to the prolonged COVID-19 pandemic, on September 1, 2020, the Center for Disease Control (CDC) issued a temporary national moratorium on evictions for nonpayment of rent set to expire December 31, 2020, and later extended by congressional and presidential action through July 31, 2021.²⁷⁷ In view of the continuation of the pandemic, House Bill 1889 extended the sunset date of the required fourteen-day nonpayment notice for all landlords, and

²⁷² Ben Finley, *Shame Put Virginia On Course to Stronger Tenant Protections*, CLICK ON DETROIT LOCAL NEWS 4 (Aug. 22, 2021), <https://www.clickondetroit.com/news/politics/2021/08/22/shame-put-virginia-on-course-to-stronger-tenant-protections>.

²⁷³ 2021 Virginia Legislative Session, BALLOTPEDIA, https://ballotpedia.org/2021_Virginia_legislative_session (last visited Sept. 10, 2022).

²⁷⁴ See Kassie Schroth, *Virginia 2021 Legislative Preview*, MCGUIREWOODS CONSULTING (Jan. 5, 2021), <https://www.jdsupra.com/legalnews/virginia-2021-legislative-preview-3393075/>. House Delegates could introduce only seven bills and State Senators could introduce only twelve bills.

²⁷⁵ S. 5088, 2020 Gen. Assemb., Spec. Sess. I (Va. 2020).

²⁷⁶ *Id.*

²⁷⁷ NATIONAL LOW INCOME HOUSING COALITION, FEDERAL MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT 1 (2021).

required the offer of a payment plan for large landlords from June 30, 2021 to June 30, 2022.²⁷⁸ The bill passed on an essentially party line vote.²⁷⁹

B. Housing Waivers by Servicemembers Banned

The Servicemembers Civil Relief Act, 50 U.S.C. App §§ 501–597 (SCRA) provides protection to active duty servicemembers, including termination of certain contracts, stays of civil proceedings, and tolling of the statute of limitations.²⁸⁰ A key provision authorizes servicemembers to terminate a lease upon the receipt of orders to deploy or to permanently change duty station.²⁸¹ To evade the clear rights provided by the SCRA, Virginia Realtors drafted and utilized a form waiving those rights which often was used by landlords.²⁸² As a result, it became virtually impossible for members of the military to rent decent housing, especially in the heavily military Hampton Roads area, without waiving SCRA rights.²⁸³ Under the new law, which passed both the House of Delegates and the State Senate unanimously, any provision in a residential lease that attempts to waive a servicemember's rights under the SCRA is void.²⁸⁴

C. When Landlords are Made Whole, Tenants Stay Housed

As noted supra, the 2019 General Assembly Session created an extended right of redemption under which the tenant could pay the landlord, the landlord's attorney, or the court all amounts owed as of two business days before a sheriff's scheduled eviction date.²⁸⁵ However, the law allowed a tenant to exercise the right of redemption—whether payment in full on or before the judgment of possession, or payment in full after the judgment of

²⁷⁸ *HB 1889 Va. Residential Landlord and Tenant Act; Landlord Remedies, Noncompliance With Rental Agreement*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=HB1889> (last visited Sept. 21, 2022).

²⁷⁹ *Id.*

²⁸⁰ Dwain Alexander, *Unenforceability of Certain Pre-Dispute Waivers of Rights Under the Servicemembers Civil Relief Act*, VA. STATE BAR (2014), <https://www.vsb.org/site/sections/military/mlnews-spring2014d>.

²⁸¹ *Id.*

²⁸² VIRGINIA REALTORS, AGREEMENT REGARDING THE SERVICEMEMBERS CIVIL RELIEF ACT, https://virginiarealtors.org/wp-content/uploads/dlm_uploads/2017/04/Virginia-REALTORS-Form-280-Servicemembers-Relief-Act-Waiver-2018-07-Fillable.pdf (last updated Jul. 2018).

²⁸³ Dave Ress, *Military Families Often Must Waive Federal Protections to Rent. State Lawmakers Want to Change That.*, THE VIRGINIAN-PILOT (Feb. 1, 2021), <https://www.pilotonline.com/military/dp-nw-servicemembers-relief-loop-hole-20210201-i37kcvv6lr7fiblnl4sbjaquy-story.html>.

²⁸⁴ *HB 2161 Active Military or a Military Spouse; Prohibits Discrimination in Public Accommodations, Etc.*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=HB2161> (last visited Sep. 21, 2022).

²⁸⁵ *Id.*

possession—only once in any twelve-month period of time.²⁸⁶ House Bill 2014 clarified and expanded the extended right of redemption, changing the requirement of payment in full from two business days before a sheriff's eviction to forty-eight hours before a sheriff's eviction.²⁸⁷ The bill also allowed tenants of large landlords with five or more units an unlimited right to use redemption, whether before or after a judgment of possession.²⁸⁸ Lastly, the bill required nonpayment notices to contain language explaining these rights, including two specific sentences that must be included verbatim.²⁸⁹ The bill passed on an essentially party line vote.²⁹⁰

D. Increased Penalties for Unlawful Eviction

As discussed *supra*, landlord lockouts, self help evictions, and utility cut-offs without a court order are unlawful in Virginia. The 2020 General Assembly Session allowed for *ex parte* temporary relief, as long as the tenant made a good faith effort to notify the landlord of the filing of the Tenant's Petition for Relief from Unlawful Exclusion and the hearing.²⁹¹ However, the law did not set any deadline by which the initial hearing or the full hearing had to occur. The lack of a deadline for a court to hear a Petition for Relief from Unlawful Exclusion stood in sharp contrast with the seven business day deadline to hear a motion to quash a garnishment of wages or a bank account.²⁹² This left families without a remedy for weeks after they were unlawfully locked out of their homes.²⁹³

House Bill 1900 required an initial hearing on a tenant's petition for relief from unlawful exclusion within five calendar days, and a full hearing no more than ten calendar days after an *ex parte* hearing.²⁹⁴ The bill also added a statutory damages provision of \$5,000 or four months' rent (whichever is greater) that the tenant shall recover if the evidence demonstrated the landlord removed or excluded the tenant from the dwelling unit unlawfully, interrupted or caused the interruption to the tenant of an essential service (heat, running water, hot water, electricity, or gas), or took action to make the

²⁸⁶ Amanda Hamilton, *New Virginia Laws Effective July 1*, VA. APARTMENT AND MGMT. ASS'N. (June 29, 2021), <https://www.vamaonline.org/news/571599/New-Virginia-Laws-Effective-July-1.htm>.

²⁸⁷ See VA. CODE ANN. § 55.1-1250(D) (2021).

²⁸⁸ *HB 2014 Virginia Residential Landlord and Tenant Act; Landlord's Acceptance of Rent With Reservation*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=HB2014> (last visited Sept. 21, 2022).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ VA. CODE ANN. § 55.1-1243.1 (repealed 2020).

²⁹² *Id.* at § 8.01-512.5.

²⁹³ Jonathan Edwards, *Virginia Could Crack Down on Illegal Evictions if 2 Lawmakers Have Their Way*, THE VIRGINIAN-PILOT (Dec. 31, 2020), <https://www.pilotonline.com/government/virginia/vp-nw-fz20-illegal-eviction-legislation-20201231-wiapv3ixkrgeawbigymjwxaxa-story.html>.

²⁹⁴ H.D. 1900, Gen. Assemb., Spec. Sess. I (Va. 2021).

premises unsafe for habitation.²⁹⁵ The bill passed on an essentially party line vote.²⁹⁶

Keeping the fourteen-day nonpayment notice and offer of a payment plan for large landlords and adding strict time deadlines and required statutory penalties in unlawful exclusion cases were good public policies that help maintain housing stability—an even more important goal during a global pandemic.

VI. STRENGTHENING REFORMS: 2021 GENERAL ASSEMBLY SPECIAL SESSION

The passage of the federal American Rescue Plan Act (ARPA) allotted \$4.431 billion to Virginia in state fiscal relief, and \$2.913 billion in local fiscal relief to address the lingering health and economic impacts of the COVID-19 pandemic.²⁹⁷ The General Assembly was called into Special Session II from August 2 through August 10, 2021, to adopt a revised budget to allocate spending of the ARPA funds.²⁹⁸ Although prior statutory protections had been extended from a June 30, 2021 expiration date to a June 30, 2022 expiration date, the same was not true of the budget protections, which had ended with the prior budget on June 30, 2021.²⁹⁹ Unless enacted with a sunset date, statutory protections continue indefinitely until changed by subsequent statutory enactment. The same is not true of protections in a budget bill, which apply only to the fiscal year to which the budget bill corresponds. During the Special Session II, the budget protections were restored, clarified, and strengthened, as follows:

A. *The Budget Bill (House Bill 7001).*

As mentioned *supra*, the prior budget bill (HB 5005) established tenant protections enacted by only a handful of other state and local jurisdictions.³⁰⁰ These included the requirement that the fourteen-day nonpayment notice inform the tenant of the Virginia Rent Relief Program (RRP, formerly RMRP) and how to reach 2-1-1 Virginia to find out about other rent relief

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *The American Rescue Plan: Impacts on Virginia*, THE WHITE HOUSE, <https://www.whitehouse.gov/wp-content/uploads/2021/03/ARP-State-Fact-Sheet-VA.pdf> (last visited Sept. 11, 2022).

²⁹⁸ Kate Andrews, *Va. General Assembly to Convene Special Session on Aug. 2*, VA. BUS. (June 23, 2021), <https://www.virginiabusiness.com/article/va-general-assembly-to-meet-aug-2>.

²⁹⁹ H.D. 5005, Gen. Assemb., Spec. Sess. I (Va. 2020).

³⁰⁰ *Id.*

programs.³⁰¹ It also included the requirement that landlords apply for RRP on the tenant's behalf within the fourteen-day period, unless the tenant paid in full, entered into a payment plan, or informed the landlord that they were applying for RRP.³⁰² All these requirements expired after the prior budget bill ended on June 30, 2021.

Despite these legal requirements, not every landlord either was aware of or willing to follow them.³⁰³ To restore, clarify, and strengthen the protections of the prior expired budget bill, the General Assembly passed House Bill 7001 with bipartisan majorities in both houses on August 9, 2021, and the Governor signed the bill into law the next day as emergency legislation effective immediately.³⁰⁴ Paragraph sixteen of the Budget Bill (HB 7001), effective from August 10, 2021 through June 30, 2022, added the following unambiguous requirements:

- Tenants were eligible for protections if they qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the COVID-19 pandemic.³⁰⁵
- The landlord was required to apply for RRP during the fourteen-day period unless the tenant paid in full, entered a payment plan, or had completed applying for rent relief—not merely that the tenant was in the process of applying for rent relief.³⁰⁶
- The landlord specifically was required to cooperate with the RRP application and provide all information and documentation required, including the landlord's Virginia W-9.³⁰⁷
- The landlord could take no action to obtain possession for nonpayment of rent until after forty-five days from completion of the RRP application, rather than from submission of the RRP application.³⁰⁸
- The landlord was required to report the account as “current” if a tenant were participating in a payment plan or receiving assistance from any rent relief program.³⁰⁹
- If the tenant were complying with the written payment plan, the landlord could

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ Ali Rockett, *As Federal Eviction Protection Expires This Weekend, Richmond Tenant Advocates Say Virginia's Rental Assistance Could Help*, RICHMOND TIMES DISPATCH (July 30, 2021), https://richmond.com/news/local/crime-and-courts/as-federal-eviction-protection-expires-this-weekend-richmond-tenant-advocates-say-virginias-rental-assistance-could/article_416e2ce5-e58a-5293-8d20-ffc78c2d666e.html; see also Caroline Coleburn, *Eviction Moratorium Expires July 31: What Virginia Renters Need to Know*, 6 News Richmond (July 30, 2021), <https://www.wtvr.com/rebound/virginia-rent-relief>.

³⁰⁴ *History of H.D. 7001, Introduced in 2021 Spec. Sess. II*, VA. LEGIS. INFO. SYS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=213&typ=bil&val=HB7001> (last visited Sept. 9, 2021).

³⁰⁵ H.D. 7001, 2021 Gen. Assemb., 2021 Spec. Sess. II (Va. 2021).

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

take no action to obtain possession.³¹⁰

- Nothing relieved either the landlord or the tenant from obligations to maintain the rental unit as set forth in the VRLTA.³¹¹
- Nothing voided any judgment for possession validly obtained by a landlord prior to the August 10, 2021 enactment date.³¹² However, even with a possession judgment obtained before enactment, the landlord was prohibited from initiating, maintaining, or advancing any legal process to obtain possession of a dwelling unit for non-payment of rent unless the landlord had fully complied with paragraph sixteen of the Budget Bill.³¹³

The near month and a half break between the expiration of the prior budget bill and the enactment of HB 7001 allowed for some evictions. However, eviction cases filed but not decided by August 10, 2021, received the full protections of the new Budget Bill.³¹⁴ Virginia continued to be a leader in expending rent relief funds and reducing evictions.

VII. REDUCED BIPARTISANSHIP INTERRUPTS LANDLORD-TENANT REFORM: THE 2022 GENERAL ASSEMBLY SESSION

After the November 2021 election, Republicans regained a 52-48 majority in the House of Delegates and also regained the Governorship.³¹⁵ The Democratic trifecta of the House of Delegates, the State Senate, and the Governor vanished. Elections have consequences, and one consequence was that the progress in landlord-tenant reforms which had begun in 2019 abruptly halted. Although some additional tenant protections received bipartisan support and were passed by the General Assembly, none became law. Two bills were vetoed by the new Governor, and three bills were defeated in the General

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ Tamica Jean-Charles, *Virginia Extended its COVID-19 Eviction Protections Until June 2022*, THE PROGRESS-INDEX (Aug. 17, 2021), <https://www.progress-index.com/story/news/2021/08/17/virginia-eviction-protection-extended-next-summer-whos-eligible/8160245002>.

³¹⁵ *Virginia General Assembly*, BALLOTEDIA, https://ballotpedia.org/Virginia_General_Assembly (last visited Sept. 10, 2022).

Assembly.³¹⁶ In all, five bills which would have continued the prior three-year trend of laws more fair, favorable, and friendly to tenants failed to be enacted.³¹⁷ These interrupted reforms are as follows:

A. House Bill 802

Poor rental housing conditions continue to plague tenants, many times because they do not know their legal rights nor how to exercise them, so they resign themselves to living with the poor conditions.³¹⁸ As noted, tenants can provide their landlord a written fourteen-day notice of needed repairs and afterwards file a Tenant's Assertion under Code of Virginia §55.1-1244 or use the self-help remedy of Repair and Deduct under Code of Virginia §55.1-1244.1.³¹⁹ Each remedy, however, has a barrier.

The Tenant's Assertion requires the tenant to be current and stay current with rent, even though the poor housing conditions may have increased housing expenses such as utility bills.³²⁰ Repair and Deduct requires the tenant to advance the cost of repairs which should be paid by the landlord.³²¹ However, nearly half of tenant households in the U.S. (49%) have less than \$1,000 in cash savings,³²² which often renders Repair and Deduct to be a cruel illusion.

Tenants often live among mold, mice, and roaches.³²³ House Bill 802 would have empowered cities, counties, and towns to take landlords to court

³¹⁶ *History of H.D. 802, Introduced in 2022 Reg. Sess.*, VA. LEGIS. INFO., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB802> (last visited Sept. 10, 2022); *History of H.D. 803, Introduced in 2022 Reg. Sess.*, VA. LEGIS. INFO. SYS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb803> (last visited Sept. 10, 2022); *History of H.D. 804, Introduced in 2022 Reg. Sess.*, VA. LEGIS. INFO. SYS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb804> (last visited Sept. 10, 2022); *History of S. 284, Introduced in 2022 Reg. Sess.*, VA. LEGIS. INFO. SYS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=sb284> (last visited Sept. 10, 2022); *History of H.D. 614, Introduced in 2022 Reg. Sess.*, VA. LEGIS. INFO. SYS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb614> (last visited Sept. 10, 2022).

³¹⁷ *History of H.D. 802, Introduced in 2022 Reg. Sess.*, *supra* note 316; *History of H.D. 803, Introduced in 2022 Reg. Sess.*, *supra* note 316; *History of H.D. 804, Introduced in 2022 Reg. Sess.*, *supra* note 316; *History of S. 284, Introduced in 2022 Reg. Sess.*, *supra* note 316; *History of H.D. 614, Introduced in 2022 Reg. Sess.*, *supra* note 316.

³¹⁸ Wyatt Gordon, *Slumlords Beware: Virginia May Give Localities New Power to Go After Poor Housing Conditions*, VIRGINIA MERCURY (Mar. 30, 2022), <https://www.virginiamercury.com/2022/03/30/slumlords-beware-virginia-may-give-localities-new-power-to-go-after-poor-housing-conditions/>.

³¹⁹ VA. CODE ANN. §55.1-1244 (2022)

³²⁰ *Id.*

³²¹ *Id.* at §55.1-1244.1.

³²² Riordan Frost, *Cash-Strapped During Covid-19*, JOINT CENTER FOR HOUSING STUDIES (June 11, 2020), <https://www.jchs.harvard.edu/blog/cash-strapped-during-covid-19>.

³²³ Sabrina Moreno & Mark Robinson, *In Richmond's Largest Latino Neighborhood, People Live among Mold, Mice, Roaches. The Landlord Says Tenants are to Blame*, THE RICHMOND TIMES-DISPATCH (Dec. 30, 2021), https://richmond.com/news/local/watch-now-in-richmonds-largest-latino-neighborhood-people-live-among-mold-mice-roaches-the-landlord/article_f2893f7f-02b5-5ff9-ae4c-de11dde94cf1.html.

if they refused to fix such problems.³²⁴ The bill passed the House of Delegates by 59-41, and the State Senate by 26-14, basically 60% support in both houses.³²⁵ The new Governor vetoed the bill as unnecessary and duplicative because localities already have the authority to enforce the Uniform Statewide Building Code (USBC).³²⁶

The Governor's veto ignored that the USBC and, in particular, Part III of the USBC (known as the Virginia Maintenance Code) applies only to the structure of the building—involving issues such as light, ventilation, plumbing, mechanical, and electrical requirements.³²⁷ The USBC provides no authority for localities to deal with issues such as mold, insects, and other pests. By a vote of 48-52, the House of Delegates sustained the Governor's veto.³²⁸

B. House Bill 803

This bill would have extended the requirement of the written fourteen-day nonpayment notice beyond the sunset date of June 30, 2022.³²⁹ A fourteen-day nonpayment notice period is useful, as opposed to a five-day nonpayment notice period, because most people get paid every two weeks or twice a month, not every five days.³³⁰ The bill was laid on the table and postponed to the 2023 General Assembly Session by a Subcommittee of the House of Delegates on a party line vote of 5-3.³³¹

C. House Bill 804.

During the COVID-19 pandemic, rental vacancy rates (the percentage of all available units in rental property that are unoccupied) in the U.S. dropped

³²⁴ Mark Robinson, *House Panel Advances Bill Giving Localities Power to Sue 'Slumlords,' Tables Other Tenant Protections*, THE RICHMOND TIMES-DISPATCH (Feb. 3, 2022), https://richmond.com/news/state-and-regional/house-panel-advances-bill-giving-localities-power-to-sue-slumlords-tables-other-tenant-protections/article_b00c4883-66f9-57e1-90e9-11cf6640da06.html.

³²⁵ History of H.D. 802, Introduced in 2022 Reg. Sess., VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB802> (last visited Sept. 10, 2022).

³²⁶ Governor's Veto Explanation of H.D. 802, Introduced in 2022 Reg. Sess., Va. Legis. Info. Sys., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+amd+HB802AG> (last visited Sept. 10, 2022).

³²⁷ VA. MAINT. CODE §§ 301.1-309.1 (2021).

³²⁸ *HB 802 Virginia Residential Landlord and Tenant Act; Enforcement by Localities*, Va. Legis. Info. Sys., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB802> (last visited Sept. 22, 2022).

³²⁹ *HB 803 Virginia Residential Landlord and Tenant Act; Landlord Remedies, Noncompliance with Rental Agreement*, Va. Legis. Info. Sys., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB803> (last visited Sept. 22, 2022).

³³⁰ Ned Oliver, *Virginia has more than a billion dollars in aid for people behind on rent. Here's how to get it*, VIRGINIA MERCURY (June 24, 2021), <https://www.virginiamercury.com/2021/06/24/virginia-has-more-than-a-billion-dollars-in-aid-for-people-behind-on-rent-heres-how-to-get-it>.

³³¹ *HB 803 Virginia Residential Landlord and Tenant Act; Landlord Remedies, Noncompliance with Rental Agreement*, *supra* note 329.

to a thirty-five-year low of 5.8%.³³² Virginia's rental vacancy rate was slightly lower at 5.7%, with Richmond having the second lowest rental vacancy among large metropolitan areas at 1.1%.³³³

Under Virginia law, a landlord may charge hundreds of dollars in non-refundable fees for the actual costs of background, credit, and other pre-occupancy checks, plus an additional \$50 fee for each adult occupant.³³⁴ These upfront fees are another barrier to tenants moving, in addition to the problems imposed by historically low vacancy rates.³³⁵

House Bill 804 attempted to lower the barrier of upfront fees in three ways: (1) requiring landlords to establish and make available their written rental admission policies; (2) permitting tenants some control of the admission process by allowing them to use a portable tenant screening report rather than having to provide different reports for each landlord; and (3) eliminating the additional \$50 fee for each adult occupant which was over and above the landlord's actual costs.³³⁶ A House of Delegates Subcommittee unanimously reported an amendment in the nature of a substitute which retained only the first provision and removed the latter two provisions.³³⁷ On an essentially party-line vote, the full House of Delegates re-referred the bill to Committee and no further action was taken.³³⁸

D. Senate Bill 284

Virginia law requires landlords to maintain fit and habitable premises³³⁹ but as discussed herein, provides tenants inadequate remedies to enforce this right.³⁴⁰ Senate Bill 284 would have established a Warranty of Habitability that the premises are fit and habitable when the lease is entered into and will remain so during the lease, as exists in at least thirty-three other states. Under a Warranty of Habitability claim, a tenant could raise the lack of habitability and show unfit or uninhabitable premises, as a defense in a nonpayment of rent eviction case, and if successful, have the court reduce the rent to the

³³² Jonathan Spader, *Homeowner and Rental Vacancy Rates Declined During COVID-19 Pandemic*, U.S. CENSUS BUREAU (May 12, 2022), <https://www.census.gov/library/stories/2022/05/housing-vacancy-rates-near-historic-lows.html>.

³³³ *Rental Vacancy Rate*, IPROPERTYMANAGEMENT, <https://ipropertymanagement.com/research/rental-vacancy-rate> (last updated Aug. 19, 2022).

³³⁴ VA. CODE ANN. §55.1-1203(C) (2022).

³³⁵ Christie Marra, *How Upfront Fees Make Rental Housing Unaffordable*, VPLC (Dec. 9, 2021), <https://vplc.org/how-upfront-fees-make-rental-housing-unaffordable>.

³³⁶ *HB 804 Residential Landlord and Tenant Act; Nonrefundable Application Fee, Limitations*, Va. Legis. Info. Sys., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB804> (last visited Sept. 21, 2022).

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ VA. CODE ANN. § 55.1-1220 (2022).

³⁴⁰ *Id.*

amount already paid or which more easily could be paid.³⁴¹ A similar bill, Senate Bill 906, passed the State Senate unanimously in the 2020 General Assembly Session, but then was recommitted to a Senate Committee and continued to 2021.³⁴² Due to the previously mentioned limitations on the introduction of bills in the 2021 General Assembly Session, no Warranty of Habitability legislation was introduced in 2021. Senate Bill 284 brought back the issue of Warranty of Habitability, which again met the same fate: it was referred to a Senate Committee and continued to 2023.³⁴³

E. House Bill 614

As discussed, the 2019 Virginia General Assembly Session reformed the statute to appeal an eviction judgment for nonpayment of rent. Instead of posting an appeal bond for up to twelve months future rent—and up to three months future damages—the tenant had to post an appeal bond only for the amount of the judgment.³⁴⁴ Unlike all other indigent defendants in civil cases who could obtain a waiver of the appeal bond, an indigent tenant defendant with a nonpayment of rent eviction judgment could not obtain such a waiver.³⁴⁵ This unequal protection of the laws meant that a barrier to appeal remained for these indigent tenants.

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³⁴¹ *Residential Tenants Deserve Safe And Healthy Housing. A Warrant of Habitability Can Help Them Get It Pass SB 906 (Stanley)*, VA. POVERTY L. CTR., <https://www.vplc.org/wp-content/uploads/2020/01/warrant-of-habitability-fact-sheet.pdf> (last visited Sept. 20, 2022).

³⁴² *SB 906 Landlord and Tenant; Noncompliance as Defense to Action for Possession for Nonpayment of Rent*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb906> (last visited Sept. 21, 2022).

³⁴³ *SB Virginia Residential Landlord and Tenant Act; Landlord's Noncompliance as Defense to Action*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=sb284> (last visited Sept. 21, 2022).

³⁴⁴ *HB 614 Appeal Bond; Removes Requirement for Indigent Parties to Post, Appeal of Unlawful Detainer*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB614> (last visited Sept. 21, 2022).

³⁴⁵ VA. CODE ANN. § 16.1-107(B) (2022).

³⁴⁶ *HB 614 Appeal Bond; Removes Requirement for Indigent Parties to Post, Appeal of Unlawful Detainer*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB614> (last visited Sept. 21, 2022).

³⁴⁷ VA. CODE ANN. § 16.1-107(B) (2022).

House Bill 614 eliminated the appeal bond requirement for these indigent tenants, passed the House of Delegates with a bipartisan majority of 60-39, and passed the State Senate with a bipartisan majority of 24-15—basically 60% support in both houses.³⁴⁸ If signed by the Governor, it would have placed all low-income tenants on the same footing as other defendants wanting to appeal and offered them the ability to have their eviction judgments reviewed on appeal in Circuit Court, just like everybody else.³⁴⁹

However, it was not to be. The Governor proposed an amendment that the appeal bond not be waived for an indigent tenant defendant, but rather be paid directly to the landlord in equal monthly installments over a period of six months or by the court date in Circuit Court on the appeal, whichever was earlier.³⁵⁰ This would have made the existing law even worse.

Rather than having a neutral entity such as the court hold the appeal bond for distribution to the parties as seemed proper in the court's judgment after trial, the appeal bond would have been held by one of the litigants—the landlord—and would not be nearly as accessible.³⁵¹ By a vote of 35-65, just two votes short of an override, the House of Delegates rejected the Governor's recommendation.³⁵² The Governor then vetoed House Bill 614.³⁵³

The reduced bipartisanship in Virginia in 2022 was not limited to landlord-tenant reform, as the Governor vetoed a total of twenty-six bipartisan bills, an historically large number which included some bills which passed the House of Delegates and the State Senate unanimously.³⁵⁴ There was also a reduction of media attention, with many outlets reporting on the eviction crisis to come, rather than the current failure of the Virginia government to avert that crisis.³⁵⁵

³⁴⁸ *Vote: HB 614 Appeal Bond; Removes Requirement for Indigent Parties to Post, Appeal of Unlawful Detainer*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+vot+SV0554HB0614+HB0614> (last visited Sept. 21, 2022).

³⁴⁹ *House Passes McClellan's Bill to End Appeals Bond Requirement in Eviction Cases*, JENNIFER MCCLELLAN STATE SENATE, <https://www.jennifermcclellan.com/house-passes-mcclellans-bill-to-end-appeals-bond-requirement-in-eviction-cases%E2%82%AC%82%80/> (last visited Sept. 19, 2022).

³⁵⁰ *Governor's Veto: HB 614 Appeal Bond; Removes Requirement for Indigent Parties to Post, Appeal of Unlawful Detainer*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+amd+HB614AG> (last visited Nov. 17, 2022).

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ Press Release, Former Va. Governor Ralph Northam, Governor Glenn Youngkin Takes Executive Action on 30 Bills (May 27, 2022), <https://www.governor.virginia.gov/newsroom/news-releases/2022/may/name-933652-en.html>.

³⁵⁴ Press Release, Democratic Party of Virginia, Veto Session: A List of Governor Youngkin's Most Controversial Vetoes and Amends. (Apr. 26, 2022), <https://vademocrats.org/news/veto-session-a-list-of-governor-youngkins-most-controversial-vetoes-and-amendments>.

³⁵⁵ See, e.g., Michael Pope, *Advocates Warn an Eviction Crisis is Looming*, WVTF (May 13, 2022), <https://www.wvtf.org/news/2022-05-13/advocates-warn-an-eviction-crisis-is-looming>.

VIII. UNFINISHED BUSINESS: NEXT STEPS IN LANDLORD-TENANT REFORM

Because of the divided Virginia government for the next one to three years, the prospects of any significant landlord-tenant housing reform before the 2026 Virginia General Assembly session appear remote. In the event such legislation is considered in the near or distant future, at least ten issues remain to be enacted.

A. Warranty of Habitability

As previously explained, at least thirty-three states have a warranty of habitability and the proposal was continued from the 2020 Session to the 2021 Session, and continued again from the 2022 Session to the 2023 Session.³⁵⁶ A key point to the warranty of habitability is that to enforce it, a tenant need not be current in rent, nor have provided written notice to the landlord (as required in a Tenant's Assertion), and need not advance the cost of repairs after providing written notice to the landlord (as required in Repair and Deduct).³⁵⁷ Instead, the tenant can litigate whether the landlord has fulfilled the statutory duty to provide fit and habitable housing.³⁵⁸ In a non-payment of rent case, if the tenant proves the housing conditions entitle her to a rent abatement (a rent credit) equal to or greater than the unpaid rent, the tenant gets to stay.³⁵⁹

B. One Unlawful Detainer at a Time

As noted *supra*, the 2019 General Assembly Session tried to eliminate serial eviction filings.³⁶⁰ Such filings occur because when each month's rent becomes due and the tenant remains behind, some landlords file subsequent unlawful detainers while the first case remains pending.³⁶¹ This results in multiple court costs and attorney's fees. The tenant must then pay these to stay in their home.³⁶² A 2019 change to the Code of Virginia § 8.01-126 failed to fix this problem: it still gave landlords the option of amending upward or

³⁵⁶ S. 284, 2022 Gen. Assemb. Reg. Sess. (Va. 2022) (continued to 2023).

³⁵⁷ *Implied Warranty of Habitability*, LEGAL INFO. INST. https://www.law.cornell.edu/wex/implicit_warranty_of_habitability (last visited Nov. 17, 2022).

³⁵⁸ VA. CODE ANN. § 55.1-1241(A) (2019).

³⁵⁹ *Id.* In states with a Warranty of Habitability, the eviction rate is less than half the eviction rate of Virginia. *Residential Tenants Deserve Safe and Healthy Housing. A Warranty of Habitability Can Help Them Get It*, *supra* note 341.

³⁶⁰ See *supra* Section 1(A)(2).

³⁶¹ Leung et al., *supra* note 42.

³⁶² *Id.* at 317.

filing a lawsuit for each month.³⁶³ As such, tenants still face multiple court costs and attorney's fees. This problem remains to be fixed.

C. Increase the Court Filing Fee for an Unlawful Detainer

As discussed herein, Virginia has one of the lowest filing fees in the nation for an eviction lawsuit.³⁶⁴ Princeton's Eviction Lab data shows the filing fee cost inversely correlates with eviction filing rates—the higher the filing fees and other barriers to filing, the lower the eviction filing rates.³⁶⁵ Increasing the filing fee would incentivize landlords to offer payment plans first, rather than file an eviction lawsuit.

D. Rent Should Mean Rent, Not Other Charges

The Revised Uniform Residential Landlord and Tenant Act (RURLTA), from which Virginia derived the VRLTA in 1974, defines “rent” using the common meaning: “payment for the right to possession of a dwelling unit.”³⁶⁶ Not so in Virginia. The VRLTA defines “rent” as “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.”³⁶⁷ This means late fees, maintenance fees, pest extermination fees, utility fees, court costs, and even attorney's fees legally are considered rent in Virginia. A tenant who legitimately disputes a charge other than rent and loses in court may be unable to appeal because an appeal bond is required in all cases involving the recovering of “rent.”³⁶⁸ A landlord's charge for something other than the right to occupy is not rent and should not be treated as such.

E. Motel Occupancy Greater than Thirty Days should be a Tenancy

Extended stay hotels and motels have become the last resort housing option for many low-income Americans.³⁶⁹ Under Virginia law, however, residents in motels, hotels and other similar transient lodging are not considered tenants unless they have resided there for more than ninety days.³⁷⁰ They have

³⁶³ S. 1627, 2019 Gen. Assemb., Reg. Sess. (Va. 2019).

³⁶⁴ *How Much Does it Cost to Evict Someone in Virginia?* IPROPERTYMANAGEMENT, <https://ipropertymanagement.com/answers/how-much-does-it-cost-to-evict-someone-in-virginia#:~:text=How%20much%20it%20costs%20to,on%20average%2C%20%2450%2D%2465> (last visited Sept. 11, 2022).

³⁶⁵ Leung et al., *supra* note 42, at 331.

³⁶⁶ REVISED UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 102 (27) (Nat'l Conf. of Comm'rs on Unif. State L. 2015).

³⁶⁷ VA. CODE ANN. § 55.1-1200 (2022).

³⁶⁸ *Id.* at § 16.1-107(c).

³⁶⁹ Mya Frazier, *When No Landlord Will Rent to You, Where Do You Go?*, N.Y. TIMES (May 20, 2021), <https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html>.

³⁷⁰ VA. CODE ANN. §§ 55.1-1201(D)(3)-(4) (2022).

almost none of the protections given to tenants. Until the 2017 General Assembly Session passed House Bill 2033, motel residents were considered tenants after they had resided there for more than thirty days.³⁷¹ Residents in motels for more than thirty days are more like tenants than like vacation guests. As a result, they should have the legal protections of tenants. The shortage of affordable housing is another reason these residents should have tenant protections.

F. Require an Accounting of the Redemption Amount on the Writ of Eviction

As noted *supra*, the 2019 and 2021 changes to Code of Virginia §55.1-1250(D) gave tenants an extended right of redemption allowing them to pay all amounts owed up to forty-eight hours before a sheriff's scheduled eviction, and have the sheriff's eviction cancelled.³⁷² However, the Writ of Eviction does not state the exact amount needed to pay to zero balance and redeem.³⁷³ A Garnishment Summons has an accounting of the exact amount a debtor needs to pay due to a judgment.³⁷⁴ The same information should be provided showing how much a tenant needs to pay to avoid eviction.

G. Require Mutuality of Attorney's Fees.

Landlords can and do use the threat of attorney's fees as a means of pressuring tenants to move. Virginia is one of thirty-three states that provides no protection from a unilateral attorneys' fees clause.³⁷⁵ In almost all cases, tenants have no countervailing threat of attorney's fees to use against landlords.³⁷⁶ In any situation (contract or statute) where the landlord can recover attorney's fees if successful, the tenant should likewise be able to recover attorney's fees if the landlord loses.

H. Hold Landlords Liable in Tort.

Even if landlords do not fulfill their duties under Virginia law, they are liable only for breach of contract; they are not liable in tort.³⁷⁷ Remedies in tort cases are much more powerful and extensive than those in contract cases, and include pain and suffering, emotional distress, and punitive damages—

³⁷¹ H.D. 2033, 2017 Gen. Assemb., Reg. Sess. (Va. 2017).

³⁷² VA. CODE ANN. § 55.1-1250 (D) (2022).

³⁷³ VA. JUD. SYS., *Request for Writ of Eviction in Unlawful Detainer Proceedings*, <https://www.vacourts.gov/forms/district/dc469.pdf> (last visited Sept. 19, 2022).

³⁷⁴ VA. JUD. SYS., *Garnishment Summons*, <https://www.vacourts.gov/forms/district/dc451.pdf> (last visited Sept. 19, 2022).

³⁷⁵ Bright, *supra* note 108, at 119-20 n.171.

³⁷⁶ *Id.* at 87-89.

³⁷⁷ See *Isbell v. Commercial Inv. Assocs.*, 644 S.E.2d 72, 74 (2007) (tenant injured by caved in ceiling); *Steward v. Holland Family Properties*, 726 S.E.2d 251, 285-86 (2012) (tenant's child harmed by lead paint).

none of which are available in contract cases. This shield for landlords' irresponsible conduct is indefensible and ought to be removed.

I. Strengthen Prohibition against Retaliatory Eviction

Virginia law has a prohibition against retaliatory eviction.³⁷⁸ Proving it, however, is next to impossible. Judges generally will not apply retaliatory eviction to the landlord's refusal to renew a lease.³⁷⁹ Twenty-three states presume that an eviction brought within a certain period, ranging from ninety days to one year, after the tenant asserts rights, is retaliatory.³⁸⁰ Virginia should likewise adopt this presumption and apply it to a refusal to renew.

J. Establish a Remedy when the Premises are Condemned

In February 2018, twelve apartment buildings with at least forty-eight apartments were condemned due to unsafe conditions in a single enforcement action by the City of Richmond Code Enforcement Operations.³⁸¹ Under existing law, if the rental premises are condemned, the tenant must vacate immediately.³⁸² The tenant is entitled only to the return of unearned rent and the security deposit.³⁸³ Premises almost certainly do not fall into such disrepair overnight; instead, the premises were likely deteriorating for months. Therefore, there should be a rebuttable presumption that the tenant is entitled to a refund of the last three months of rent.³⁸⁴

CONCLUSION: WHY EVICTION STILL MATTERS

In 2015, a relatively unknown Professor of Sociology at Princeton University was awarded a MacArthur Foundation Fellowship.³⁸⁵ He decided to research and write about a topic no one else had recently explored: evictions. Two years later, Matthew Desmond's book, *Evicted: Poverty and Profit in*

³⁷⁸ VA. CODE ANN. § 55.1-1258 (2022).

³⁷⁹ George M. Armstrong, Jr. & John C. LaMaster, *Retaliatory Eviction as Abuse of Rights: A Civilian Approach to Landlord-Tenant Disputes*, 47 LA. L. REV. 1, 9 (1986).

³⁸⁰ Janet Portman, *State Laws Prohibiting Landlord Retaliation*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-prohibiting-landlord-retaliation.html> (last visited Sept. 11, 2022).

³⁸¹ Jasmine Norwood, *Their building was condemned, and they're homeless. Whose fault is it?*, CBS 6 NEWS RICHMOND (Feb. 13, 2018), <https://www.wtvr.com/2018/02/13/their-building-was-condemned-and-theyre-homeless-whose-fault-is-it>.

³⁸² Larry F. Nordick, *Your Rights as a Tenant*, VA. LEGAL AID SOC'Y (Sept. 12, 2018), <https://www.valegalaid.org/files/E095B726-FCD8-81C1-17DC-A16C7ED73FFF/attachments/A547C34B-D98B-49AC-ACCA-336AA3EB547F/tenants-rights.pdf>.

³⁸³ VA. CODE ANN. § 55.1-1226 (2022).

³⁸⁴ Nicole Merlene, *What's Next: Policies to Avoid Uninhabitable Living Situations*, ARL NOW (May 20, 2021, 3:00 PM), <https://www.arlnow.com/2021/05/20/whats-next-policies-to-avoid-uninhabitable-living-situations/>.

³⁸⁵ *Matthew Desmond*, MACARTHUR FOUND. (Sept. 29, 2015), <https://www.macfound.org/fellows/class-of-2015/matthew-desmond#searchresults>.

the American City, won the Pulitzer Prize for General Nonfiction.³⁸⁶ As discussed, Professor Desmond started the Princeton EvictionLab, which led directly to the April 8, 2018 New York Times story that was the catalyst for Virginia's three years of landlord-tenant reform, increased tenant protections, and this law review article.

Equitable laws that allow tenants a full and fair opportunity to remain stably housed, while also allowing landlords a full and fair opportunity to recover their rental properties, should not become a partisan issue subject to shifting political winds.³⁸⁷ Media attention and bipartisanship are the two pillars that will support Virginia's return to the reform of landlord-tenant laws which characterized the three-year period of 2019 through 2021.

Some see Virginia's retreat from tenant protections as desirable. Commenting on June 30, 2022, about the end of some tenant protections the next day, Virginia's Governor said: "The overarching COVID relief package does expire tomorrow, and I think this is appropriate on our steps back to normalcy."³⁸⁸

Others disagree. Victoria Horrock, a housing attorney with the Legal Aid Justice Center in Richmond, perhaps said it best: "We don't want to go back to normal. Most of the top evicting cities in the country are in Virginia, I don't think that's a normal we want to go back to."³⁸⁹

Recently, the federal Legal Services Corporation (LSC) has been accessing the Virginia Judicial System database and providing monthly reports to all legal aid programs in Virginia about the number of upcoming eviction filings. For the month of October 2022, a total of 12,212 eviction lawsuits were filed in Virginia.³⁹⁰ This projects to an annual total of 146,544 eviction lawsuits, slightly above the average of 145,414 eviction lawsuits filed in Virginia courts each year from 2011 to 2016. Lamentably, normalcy for Virginia tenants has returned.

³⁸⁶ Matthew Desmond, *Evicted: Poverty and Profit in the American City*, PULITZER, <https://www.pulitzer.org/winners/matthew-desmond> (last visited Sept. 11, 2022).

³⁸⁷ Jake Blumgart, *Matthew Desmond on America's eviction epidemic and housing as a nonpartisan issue*, PLAN PHILLY (Nov. 15, 2016), <https://why.org/articles/matthew-desmond-on-america-s-eviction-epidemic-and-housing-as-a-non-partisan-issue/>.

³⁸⁸ Elizabeth Holmes, *Renter protection ends. Now experts say Virginia evictions will spike: 'We're already seeing it tick up'*, CBS 6 NEWS RICHMOND (June 30, 2022), <https://www.wtvr.com/news/local-news/renter-protection-virginia-evictions-june-30-2022>.

³⁸⁹ *Id.*

³⁹⁰ *Statewide Report*, LEGAL SERVS. CORP., <https://lsc-live.app.box.com/s/p5yn5i76o9n5nz3mbv0s2f4qjjo0zldh> (last visited Nov. 16, 2022).

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