

**EVICTIONS IN VIRGINIA: FROM  
CRISIS TO SOLUTIONS –  
October 2021**

**Martin Wegbreit, Esq.**

**Central Virginia Legal Aid Society**

**101 West Broad Street, Suite #101**

**Richmond, VA. 23220**

**[marty@cvlas.org](mailto:marty@cvlas.org) / 804-200-6045**

# ALMOST ALL EVICTIONS ARE CAUSED BY NONPAYMENT OF RENT



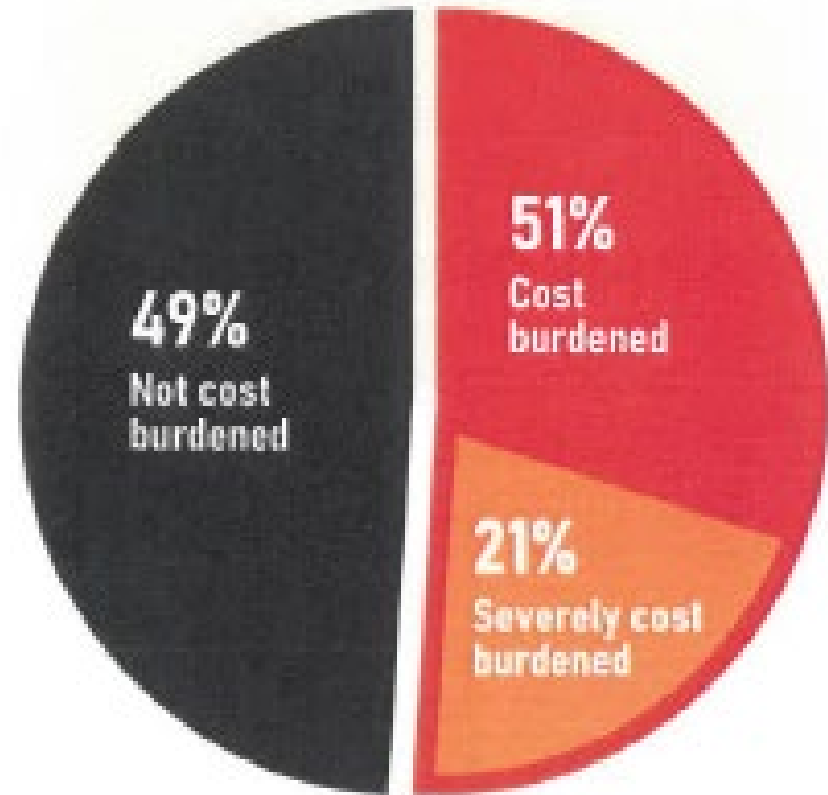
For a month in the summer of 2019, Central Virginia Legal Aid Society surveyed all evictions that appeared at the John Marshall Court Building for their first court hearing following an unlawful detainer.\*

- There were **1665 total cases** during that month, or an average of **83.2 cases per court day**. (Up from 1,391 in an average month in 2018.)
- In **95% of cases (1,557)** the landlord's claim for possession was based on past due rent.
- The amount of back rent owed varied widely, from as low as **\$15.78** to as much as **\$18,320**.
- In cases where a judgment or default judgment was for the landlord, the average back rent owed was **\$989.62**. The average court cost was **\$57.41**, the average attorney fees (when awarded) were **\$169.58**, and the average late fees (when awarded) were **\$141**.

## **MOST NONPAYMENT OF RENT IS CAUSED BY RENT BURDEN**

- Cost burdened households spend over 30% of their income on housing costs.
- Severely burdened households spend over 50% of their income on housing costs.

**OVER HALF OF ALL  
RENTERS IN RICHMOND  
ARE COST BURDENED  
OR SEVERELY COST  
BURDENED.**



# RENT BURDEN IS CAUSED BY LACK OF AFFORDABLE HOUSING

There is an affordable housing shortage in Richmond

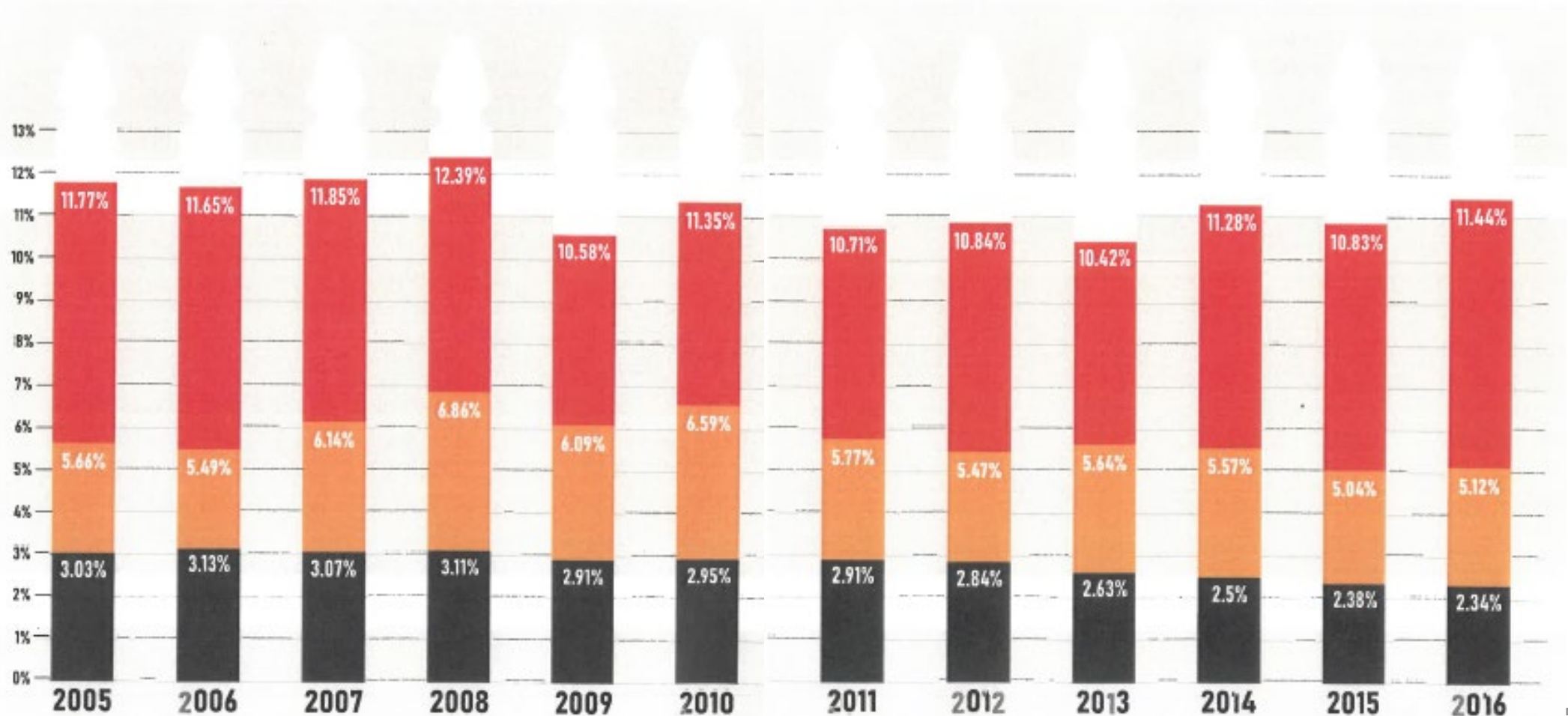


- **Extremely low-income renter households (at or below 30% Area Median Income – AMI)**
- **Affordable and available rental units**

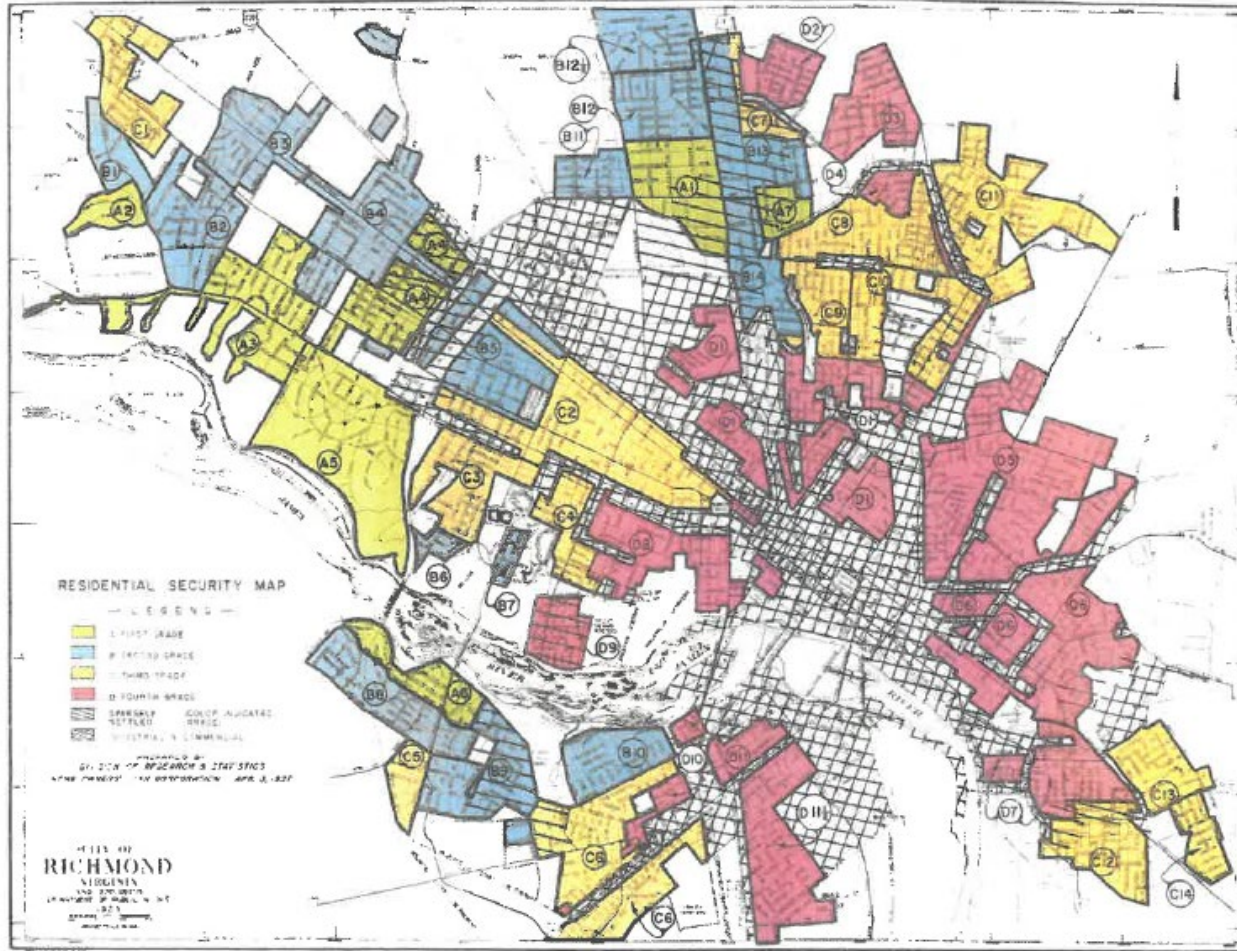
# LACK OF AFFORDABLE HOUSING CAUSES EVICTIONS

Richmond's eviction rates are **quadruple** the national average

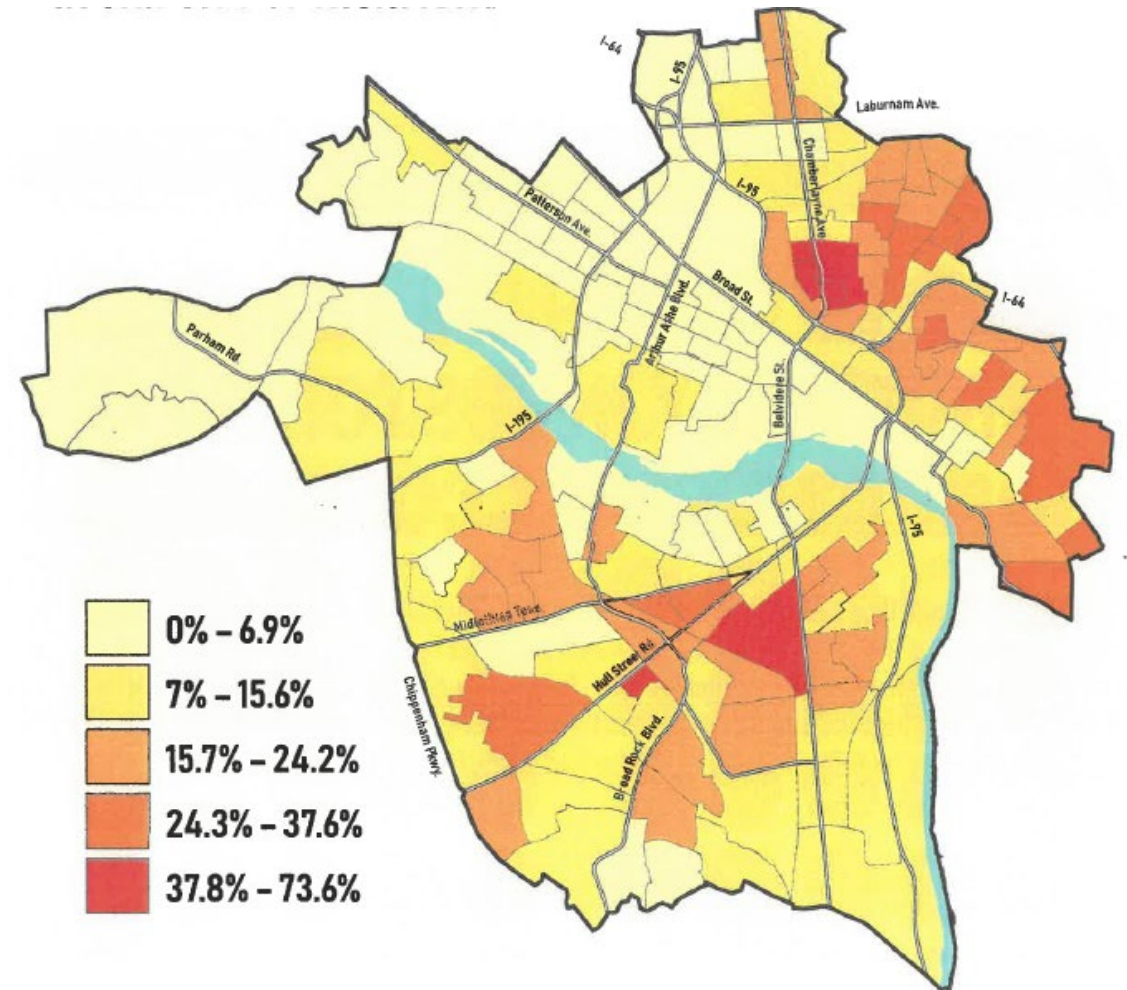
■ UNITED STATES ■ VIRGINIA ■ CITY OF RICHMOND



# REDLINING & RACISM SHAPED RICHMOND'S NEIGHBORHOODS



**1937 RICHMOND REDLINING MAP**



**2016 RICHMOND EVICTION MAP**

## **VIRGINIA STATE EVICTION PROTECTIONS - §55.1-1245**

- **All landlords required to provide 14-day nonpayment notices to tenants late on rent – an increase from the past 5-day notice**
- **Landlords with more than four rental units must offer payment plans to tenants late on rent – change from the past when such plans were not required to be offered**
  - **Once every lease term**
  - **Paying off rent due in equal installments over six months or until lease ends (whichever is sooner)**
- **Both requirements continue through 6/30/22**

## **VIRGINIA STATE EVICTION PROTECTIONS - §55.1-1245**

- **As of 8/10/21, landlords may take no action to get possession or evict for nonpayment of rent – if the household has had financial hardship directly or indirectly due to COVID-19 – unless the landlord:**
  - **Gives tenant a 14-day nonpayment notice informing tenant about the Rent Relief Program (RRP), and**
  - **During the 14-day period, applies for RRP on the tenant’s behalf unless tenant pays in full, enters a payment plan, or tenant already has applied for RRP**
- **Landlords must cooperate with RRP applications by providing all information and documents needed, including the state W-9 form**
- **All requirements continue through 6/30/22**



## **VIRGINIA STATE EVICTION PROTECTIONS - §55.1-1245**

- **After application, landlords may take no action to get possession or evict unless:**
  - **Tenant is found not eligible for RRP, or**
  - **Tenant refuses to cooperate with RRP application, or**
  - **RRP not approved in writing w/in 45 days of completed application, or**
  - **For any subsequent application, RRP not approved in writing within 14 days of a completed application, or**
  - **RRP runs out of money**
- **If a tenant is complying with a written payment plan, landlord may take no action to get possession or evict for nonpayment of rent**
- **Requirements do not void judgment for possession obtained before 8/10/21; however, landlord still may take no action to get possession or evict for nonpayment of rent unless requirements followed**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **December 2020 federal stimulus package:**

- **Must be used by the end of 2021 calendar year**
- **Total for Statewide Portal - \$524,601,619**
- **Total for Chesterfield Program - \$10,595,714**

## **March 2021 federal stimulus package - American Rescue Plan Act (ARPA):**

- **Emergency Rental Assistance for VA: Est. \$450M (must be obligated by 5/2022)**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Basic Eligibility Requirements:**

- **Household income at or below 80% Area Median Income**
- **Rent amount at or below 150% Fair Market Rent**
- **DHCD interpreting income loss/increase in expenses very broadly (“Anything that happens during this pandemic is somehow related to it;” overarching goal is to prevent spread of COVID-19 by keeping tenants housed)**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Loss of Income:**

- **Tenant has been laid off**
- **Tenant's place of employment has closed**
- **Tenant has experienced a reduction in hours of work**
- **Tenant must stay home to care for children due to closure of daycare and/or school**
- **Tenant must stay home to care for children due to distance learning.**
- **Tenant has lost child or spousal support**
- **Tenant has been unable to find employment due to COVID-19**
- **Tenant is unwilling or unable to participate in employment due to the risk of severe illness from COVID-19**
- **Tenant is not able to work and/or missed hours due to contracting, being exposed or having to quarantine due to COVID-19**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Increased COVID-19 Related Expenses:**

- **Tenant has had an increase in childcare expenses**
- **Tenant has had an increase in medical expenses**
- **Tenant has had an increase in food costs**
- **Tenant has had an increase in utility costs**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Income Eligibility:**

- **Tenant can complete self-attestation form saying their HH income is equal to or under 80% AMI**
- **Automatically income-eligible if tenant household is less than four people and one of them receives:**
  - **Unemployment benefits**
  - **TANF benefits**
  - **SNAP benefits**
  - **WIC**
  - **LIHEAP**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Required documentation:**

**1. Rental Agreement (valid lease or alternative lease documentation) which must include:**

- **Tenant and Landlord's full names**
- **Monthly rent amount**
- **What is included in the monthly rent (e.g., utilities, Internet, etc.)**
- **Term of the lease (i.e., what month and year does the agreement**

**begin and end)**

**2. Tenant/Landlord Ledger**

**3. Tenant Income Documentation**

**4. Landlord's Virginia W-9**

**5. RRP Landlord/Tenant Agreement**

# VIRGINIA RENT RELIEF PROGRAM (RRP)

## Application Access and Troubleshooting:

- Tenants apply through DHCD: <https://www.dhcd.virginia.gov/rmrp>
- Third parties can be authorized to apply on tenant's behalf
- Chesterfield Co tenants apply for RRP at <http://actsrva.org/chesterfield-emergency-rent-and-utility-assistance-cera>
- Fairfax Co tenants apply for RRP at <https://www.fairfaxcounty.gov/neighborhood-community-services/coordinated-services-planning>
- Landlords apply through Virginia Housing: <https://www.vhda.com/BusinessPartners/PropertyOwnersManagers/Pages/rentrelief.aspx>
- Email [rrp@dhcd.virginia.gov](mailto:rrp@dhcd.virginia.gov) for status of tenant application & [rentrelief@virginiahousing.com](mailto:rentrelief@virginiahousing.com) for status of landlord application



# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **Rental Assistance Paid:**

- **Paid directly to landlord no matter who applies**
- **Rent arrears paid back to 4/1/2020 – limit of 15 months assistance**
- **Once DHCD starts using ARPA funds, 3 additional months can be paid for a total of 18 months assistance**
- **Current and up to three months' future rent paid upon application approval**
- **3 months' rent paid at a time upon renewal**
- **Same payments can be made on behalf of Housing Choice Voucher holders**

# **VIRGINIA RENT RELIEF PROGRAM (RRP)**

## **RRP results as of Sept 6, 2021:**

- **Households approved July 2020 – Sept 6, 2021**                      **57,500**
  - **73.53% at or below 30% AMI**
  - **16.63% between 31% and 50% AMI**
  - **9.76% between 51% and 80% AMI**
- **Total amount disbursed July 2020 – Sept 6, 2021**                      **\$410 million**
- **Average rent relief payment**    **\$7,130**
- **RRP still has more than \$600 million in unspent funds – enough to pay rent arrears for more than 84,000 tenants**
- **No tenant in Virginia should be evicted for non-payment of rent until after the last dollar has been spent**

## **VIRGINIA RENT RELIEF PROGRAM (RRP)**

- **75-95% of all eviction filings in Virginia are due to nonpayment of rent**
- **Confidence in ability to pay rent remains low**
- **U.S. Census Household Pulse Survey found one in four Virginia tenants have slight or no confidence in ability to pay next month's rent**
- **Virginia remains the best rent relief program in the nation having spent a higher percentage of available funds than any other state – the National Apartment Association cited it as one of the two best, with clear eligibility and application processes**
- **[https://www.naahq.org/news-publications/we-can-improve-rental-assistance-distribution-here%E2%80%99s-how?utm\\_source=Pardot&utm\\_medium=Email&utm\\_campaign=Apartment-Advocate](https://www.naahq.org/news-publications/we-can-improve-rental-assistance-distribution-here%E2%80%99s-how?utm_source=Pardot&utm_medium=Email&utm_campaign=Apartment-Advocate)**

# MITIGATION OF DAMAGES RULE

- If landlord does not cooperate with RRP & files an eviction lawsuit, the tenant should go to court & bring written proof of RRP application
- Tenant should use RRP application to ask the judge to apply the mitigation of damages rule
- Rule requires a party who has not breached a contract to minimize damages when the other party breaches the contract
- Court may refuse to award damages that reasonably could have been avoided

## **MITIGATION OF DAMAGES RULE**

- Rule applies in landlord-tenant cases involving nonpayment of rent *Hannum v. Dusch*, 154 Va. 356, 153 S.E.2d 824 (1930); Code of Virginia §55.1-1251 – “nothing contained in this section shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement
- As of 7/1/2020, Virginia’s Fair Housing Law prohibits landlords from refusing to accept rent based upon the source of the funds; Code of Virginia §36-96.3(A)(3) – “It shall be an unlawful discriminatory housing practice for any person to . . . discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of . . . source of funds”

## **BAN ON SOURCE OF FUNDS DISCRIMINATION - §36-96.3 - 2020**

- **Prior to 7/1/2020, housing discrimination banned for eight reasons - race, color, religion, national origin, gender (including sexual harassment), family status (having children under 18, or being pregnant), elderliness (55 or older), or disability**
- **Starting 7/1/2020, source of funds, gender identity, sexual orientation, and veteran status added as a 4 more reasons why a person may not be denied housing**
- **Not apply to owners of 4 or fewer rental units, or 10% or less ownership interest in 4 or more rental units. Not apply if source of funds not approved within 15 days of request to approve tenancy**

## **BAN ON SOURCE OF FUNDS DISCRIMINATION - §36-96.3 - 2020**

- Income to rent ratio based on total rent, not tenant share, disparately impacts 4 protected classes – race, gender, disability, and source of funds
- No substantial, legitimate, non-discriminatory reason – violates fair housing
- Rent \$1,000, income \$800, tenant (30%) pays \$240, voucher pays \$760
- Tenant has 3.3 times tenant share of rent, but 0.8 times total rent
- Reason for income to rent ratio is to assess & minimize risk & there is almost zero risk of voucher not paying
- Tenant meets income to rent ratio
- Guidance document from VA Real Estate Board - [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\222\GDoc\\_DPOR\\_6978\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\222\GDoc_DPOR_6978_v1.pdf)

# **WRITTEN LEASES REQUIRED - §55.1-1204 - 2019**



- **Starting July 1, 2019, landlords must offer written leases**
- **If landlord does not do that, law sets out a specific lease that will apply.**
  - **The lease is 12 months with no automatic renewal**
  - **Rent is paid in 12 monthly payments**
  - **Rent is at the fair market rent, if no amount is agreed upon**
  - **Rent is due on the 1<sup>st</sup> of the month and late after the 5<sup>th</sup> of the month.**
    - **A reasonable late fee (no more than 10%) may be charged**
    - **The security deposit can be no more than two months' rent**
    - **The landlord and tenant still may enter into a written lease**



# NOTICE TO TENANTS ABOUT LEGAL RIGHTS - §§36-139(26), 55.1-1204(B), 55.1-1204(G) - 2020



- Starting July 1, 2020, landlords must offer to tenants entering new or renewed leases a statement of tenant rights posted on the website of the Department of Housing and Community Development (DHCD). See, <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/statement-of-tenant-rights-and-responsibilities-english.pdf>
- Statement must be signed by both landlord and tenant
- Landlord may not sue a tenant in any court for any lease violation unless this statement has been signed



## Virginia Statement of Tenant Rights and Responsibilities as of July 1, 2020

This is a summary of tenants' rights and responsibilities under the Virginia Residential Landlord and Tenant Act. This summary does not modify your lease or Virginia law. A lease cannot give up a tenant's rights under the law. The information below is not intended as legal advice. Tenants with questions are encouraged to contact their local legal aid program at (866) 534-5234 or [valegalaid.org/find-legal-help](http://valegalaid.org/find-legal-help).

### **Tenant Rights**

#### **Applications:**

Tenants may be charged a nonrefundable application fee of no more than \$50 (not including third party costs for a background check) and a refundable application deposit. If the tenant does not rent the unit, the application deposit must be returned, minus any actual costs or damages. (§55.1-1203)

#### **Written lease:**

Under the VRLTA, a landlord is required to provide a tenant a written lease. If a landlord fails to do so, the VRLTA still protects a tenant by establishing a statutory lease between landlord and tenant for 12 months not subject to automatic renewal. (§55.1-1204)

#### **Disclosure:**

A landlord must reveal certain information to the tenant, including any visible evidence of mold (§55.1-1215), the name and address of the owner or property manager (§55.1-1216) and notice of sale or foreclosure of the property. (§§55.1-1216, 1237).

#### **Security Deposit:**

A landlord may require a security deposit of up to two month's rent. Within five days of move in the tenant has a right to object to anything in the move-in report. The tenant also has a right to be present at a move-out inspection, which must be made within 72 hours of delivery of

## LIMITS ON LATE FEES - §55.1-1204(E) - 2020

- Effective April 22, 2020, 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
- May charge only if late fee is provided for in written rental agreement, or under default lease provision of Code of Virginia §55.1-1204(C)(5)
- Applies only to tenant portion of the rent



## **REPAIR AND DEDUCT - §55.1-1244.1 - 2020**



- **Starting July 1, 2020, tenants may give written notice to the landlord of needed repairs and wait 14 days**
- **If repairs not started within 14 days, can contract with a licensed contractor or pesticide business to get needed work done**
- **Cost cannot be more than \$1,500, or one-month's rent, whichever is higher**
- **Tenant can deduct cost of repairs from the rent by giving landlord an itemized statement of the work and a receipt for the work**
- **Not available if tenant caused condition, denied access to premises, or condition remedied by landlord prior to tenant's contract with 3<sup>rd</sup> party**

## **EXTENDED RIGHT OF REDEMPTION - §55.1-1250 – 2019 & 2021**

**After landlord files eviction lawsuit & on or before court date, tenant can:**

- **Pay & Stay (Redemption)** - dismissed as paid if tenant pays all amounts owed as of the court date: all rent, all late fees, court costs, and reasonable attorney's fees (if a landlord's attorney is involved).
- **Offer to Pay & Stay (Redemption Tender)** – on 1<sup>st</sup> court date, tenant shows judge a written commitment from govt. or non-profit agency to pay all or part of redemption amount.
  - Judge must postpone case ten days and allow tenant to come back with the full redemption amount
  - If so, case is dismissed as paid
  - If not, landlord gets an order of possession

## **EXTENDED RIGHT OF REDEMPTION - §55.1-1250 – 2019 & 2021**

- **After that, tenants have the right to pay to zero balance up to 48 hours before a Sheriff's eviction and have eviction cancelled (extended redemption to "pay & stay")**
- **Payment by cashier's check, certified check, or money order: 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, Sheriff's fees, and reasonable attorney's fees (if a landlord's attorney is involved)**
- **Tenants of large landlords (5 or more units) have no limit on redemption**
- **Tenants of small landlords (4 or fewer units) may use redemption once in any 12-month period**
- **Termination notices must have language explaining these rights**

## **REMEDIES FOR UNLAWFUL EXCLUSION - §55.1-1243(B) – 2020 & 2021**

- **Landlord may not evict a tenant without following court eviction process**
- **Tenant can get temporary relief even if landlord has not been served, and even if landlord is not in court.**
- **Tenant must have made good faith effort to notify landlord about the petition and the hearing.**
- **If temporary relief granted, must be a full hearing within five days.**
- **Can get order to recover possession, resume utility, actual damages, and attorney's fees.**

## **REMEDIES FOR UNLAWFUL EXCLUSION - §55.1-1243(B) – 2020 & 2021**

- If lock out, utility cut off, or self-help eviction, tenant should file Tenant's Petition for Relief from Unlawful Exclusion (Form DC-431) in GDC
- May seek recovery of possession, resume interrupted utility, termination of rental agreement, actual damages and reasonable attorney's fees.
- As of 7/1/2021, unlawful exclusions require initial hearing within five days, and statutory damages of \$5,000 or 4 months' rent, whichever is greater
- Sue true owner using Google search of "real property search [County of Independent City name]"
- If true owner not a person, get name & address of Registered Agent (RA) from S.C.C. – 804-371-9733 or 866-722-2551 – and serve RA
- Fill in company name as defendant, followed by RA name & address



## WHERE TENANTS CAN GET HELP



- Civil legal aid programs – 866-LEGLAID
- Eviction legal help line – 833-NOEVICT
- On-line *pro bono* question & answer website  
– <https://Virginia.freelegalanswers.org>
- Legal information – [www.VaLegalAid.org](http://www.VaLegalAid.org) and <https://housing.vplc.org>
- Pre-recorded legal information before 9:00 a.m., after 5:00 p.m., & all day on weekends & legal holidays – 866-534-5243
- VA Judicial System Self-Help website – <http://selfhelp.vacourts.gov>
- VA Law Help 2 Go – mobile friendly platform with legal information in video format – [www.valawhelp2go.org](http://www.valawhelp2go.org) or 703-293-5544