

## 2013 Legislative Update

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**§ 55-248.21:2. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.**

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

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

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

*B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.*

*C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.*

*D. The landlord may not charge any liquidated damages.*

*E. The victim's obligations as a tenant under § [55-248.16](#) shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to § [55-248.35](#).*

**§ 55-248.6:1. Application deposit and application fee.**

Any landlord may require *a refundable application deposit in addition to a nonrefundable application fee*. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

**§ 55-248.15:1. Security deposits.**

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

*Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to the forwarding address provided by one of the tenants. If no forwarding address is provided to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the balance of such security deposit shall escheat to the Commonwealth and shall be paid into the state treasury and credited to the Virginia Housing Partnership Revolving Fund established pursuant to [§ 36-142](#). Upon payment to the Commonwealth, the landlord shall have no further liability to any tenant relative to the security deposit. If the landlord or managing agent is a real estate licensee, compliance with this paragraph shall be deemed compliance with [§ 54.1-2108](#) and corresponding regulations of the Real Estate Board.*

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under

the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days thereafter, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter, (ii) a vacating notice to the tenant in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § [55-248.6](#).

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

The landlord shall notify the tenant in writing of any deductions provided by this subsection to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection B. Such notification shall not be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit and interest thereon to the tenant, together with actual damages and reasonable *attorney fees*, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to the security deposit and interest thereon credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this paragraph, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

**B. The landlord shall:**

1. Accrue interest at an annual rate equal to four percentage points below the Federal Reserve Board discount rate as of January 1 of each year on all property or money held as a security deposit. However, no interest shall be due and payable unless the security deposit has been held

by the landlord for a period exceeding 13 months beginning from the commencement date of the rental agreement or after the effective date of any prior written or oral rental agreements with the same tenant, for continuous occupancy of the same dwelling unit until termination of the tenancy and delivery of possession, such security deposit earning interest which begins accruing from the effective date of the rental agreement, and such interest shall be paid only upon termination of the tenancy, delivery of possession and return of the security deposit as provided in subsection A;

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

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

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

D. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

### **§ 55-248.31. Noncompliance with rental agreement; monetary penalty.**

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § [55-248.16](#) materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

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

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a

criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ [54.1-3400](#) et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § [16.1-228](#) that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § [55-248.31:01](#) based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § [16.1-253.1](#), [16.1-279.1](#), or subsection B of § [20-103](#), the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § [55-248.16](#), and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a

subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § [55-248.35](#). If a check for rent is delivered to the landlord drawn on an account with insufficient funds, *or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment* and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § [55-248.35](#). Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § [8.01-27.1](#) or civil recovery under § [8.01-27.2](#), as a part of other damages requested on the unlawful detainer filed pursuant to § [8.01-126](#), provided the landlord has given notice in accordance with § [55-248.6](#), which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § [55-248.16](#). The landlord shall be entitled to recover reasonable attorney fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorney fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorney fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

**§ 55-248.34:1. Landlord's acceptance of rent with reservation.**

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

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

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

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



payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, *regardless of the term of the rental agreement or any renewal term thereof.*

**§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.**

A. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § [8.01-293](#), [8.01-296](#), or [8.01-299](#). When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant Act (§ [55-248.2](#) et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

B. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or paper printout of an electronically stored document including a copy of the original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. *An attorney or agent of the landlord or managing agent may present such affidavit into evidence.*

*C. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may include in the affidavit entered into evidence pursuant to subsection B a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that the affidavit accurately sets forth the amount due the plaintiff, the court shall enter a judgment for such amount in addition to entering an order of possession for the premises.*

**§ 54.1-2108.1. Protection of escrow funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.**

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action pursuant to § [16.1-77](#).
2. If there is in effect at the date of the foreclosure sale, a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the parties.
3. If there is in effect at the date of the foreclosure sale, a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

B. *Notwithstanding any other provision of law:*

- 1. Any prepaid rent paid more than one month prior to the rent due date to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction. Any rent paid less than one month prior to the rent due date shall be current rent and may be deposited into an operating account of the real estate licensee.*
- 2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.*
- 3. Any application deposit as defined by § [55-248.4](#) paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following*

*approval of the rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease transaction.*

*4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions, as applicable.*