Virginia Apartment Management Association's

Virginia Redbook

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Virginia's Legal Guide for Residential Property Management

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NAA NATIONAL APARTMENT ASSOCIATION

TABLE OF CONTENTS

Virginia Residential Landlord and Tenant Act
Code of Virginia. Chapter 13.2

General Provisions

Section 55-248.2 Short Title 1
Section 55-248.3 Purposes of Chapter 1
Section 55-248.3:1 Applicability of Chapter 1
Section 55-248.4 Definitions 2
Section 55-248.5 Repealed 7
Section 55-248.6 Notice 7
Section 55-248.6:1 Application Deposit and Application Fee 8
Section 55-248.7 Terms and Conditions of Rental Agreement; Copy for Tenant; Accounting of Rental Payments 9
Section 55-248.7:1 Prepaid Rent; Maintenance of Escrow Account 10
Section 55-248.7:2 Landlord May Obtain Certain Insurance for Tenant 10
Section 55-248.8 Effect of Unsigned or Undelivered Rental Agreement 11
Section 55-248.8:1 Prohibited Provisions in Rental Agreements 12
Section 55-248.9:1 Confidentiality of Tenant Records 12
Section 55-248.10 Repealed 14
Section 55-248.10:1 Landlord and Tenant Remedies for Abuse of Access 14

Landlord Obligations

Section 55-248.11 Repealed 14
Section 55-248.11:1 Inspection of Premises 14
Section 55-248.11:2 Disclosure of Mold in Dwelling Units 14
Section 55-248.12 Disclosure 15
Section 55-248.12:1 Required Disclosure for Properties Located Adjacent to a Military Air Installation; Remedy for Nondisclosure 16
Section 55-248.12:2 Required Disclosure for Properties with Defective Drywall; Remedy for Nondisclosure 16
Section 55-248.12:3 Required Disclosures for Property Previously Used to Manufacture Methamphetamine; Remedy for Nondisclosure 17
Section 55-248.13 Landlord to Maintain Fit Premises 17
Section 55-248.13:1 Landlord to Provide Locks and Peepholes 19
Section 55-248.13:2 Access of Tenant to Cable, Satellite and Other Television Facilities 19
Section 55-248.13:3 Notice to Tenants for Insecticide or Pesticide Use 20
Section 55-248.14 Limitation of Liability 21
Section 55-248.15 Tenancy at Will; Effect of Notice of Change of Terms or Provisions of Tenancy 21
Section 55-248.15:1 Security Deposits 21
Section 55-248.15:2 Schedule of Interest Rates on Security Deposits 23

Tenant Obligations

Section 55-248.16 Tenant to Maintain Dwelling Unit 24
Section 55-248.17 Rules and Regulations 26
Section 55-248.18 Access; Consent; Correction of Nonemergency Conditions; Relocation of Tenant 26
Section 55-248.18:1 Access Following Entry of Certain Court Orders 28
Section 55-248.18:2 Relocation of Tenant Where Mold Remediation Needs to be Performed in the Dwelling Unit 29
Section 55-248.19 Use and Occupancy by Tenant 29
Section 55-248.20 Tenant to Surrender Possession of Dwelling Unit 30

Tenant Remedies

Section 55-248.21 Noncompliance by Landlord 30
Section 55-248.21:1 Early Termination of Rental Agreement by Military Personnel 30
Section 55-248.21:2 Early Termination of Rental Agreements by Victims of Family Abuse, Sexual Abuse, or Criminal Sexual Assault 31
Section 55-248.21:3 Notice to Tenant in Event of Foreclosure 32
Section 55-248.22 Failure to Deliver Possession 33
Section 55-248.23 Wrongful Failure to Supply Heat, Water, Hot Water or Essential Services 33
Section 55-248.24 Fire or Casualty Damage 33
Section 55-248.25 Landlord's Noncompliance as Defense to Action for Possession for Nonpayment of Rent 34
Section 55-248.25:1 Rent Escrow Required for Continuance of Tenant's Case 35
Section 55-248.26 Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion or Diminution of Service 36
Section 55-248.27 Tenant's Assertion; Rent Escrow; Dwelling Units 36
Sections 55-248.28-30 Repealed 37

Landlord Remedies

Section 55-248.31 Noncompliance with Rental Agreement; Monetary Penalty 37
Section 55-248.31:1 Barring Guest or Licensee of Tenants 40
Section 55-248.31:1 Sheriffs Authorized to Serve Certain Notices; Fees Therefor 40
Section 55-248.32 Remedy by Repair, etc.; Emergencies 40
Section 55-248.33 Remedies for Absence, Nonuse and Abandonment 41
Section 55-248.34 Repealed 41
Section 55-248.34:1 Landlord's Acceptance of Rent with Reservation 41
Section 55-248.35 Remedy after Termination 43
Section 55-248.36 Recovery of Possession Limited 43
Section 55-248.37 Periodic Tenancy; Holdover Remedies 43
Section 55-248-38 Repealed 44
Section 55-248.38:1 Disposal of Property Abandoned by Tenants 44
Section 55-248.38:2 Authority of Sheriffs to Store and Sell Personal Property Removed from Residential Premises; Recovery of Possession by Owner; Disposition; Sale 45
Section 55-248.38:3 Disposal of Property of Deceased Tenants 46

Retaliatory Action

Section 55-248.39 Retaliatory Conduct Prohibited 46
Section 55-248.40 Actions to Enforce Chapter 47

Virginia Landlord Tenant Act
Code of Virginia. Chapter 13

Section 55-217 Applicability; Right to Terminate Tenant 49
Section 55-217.1 Grantees and Assignees to Have Same Rights Against Lessees as Lessors, etc. 49
Section 55-218 Lessees, etc., to Have Same Rights Against Grantees, etc., as Against Lessors 49
Section 55-218.1 Appointment of Resident Agent by Nonresident Property Owner; Service of Process, etc., on Such Agent or on Secretary of the Commonwealth 49
Section 55-219 Apportionment on Purchase of Part of Land by Holder of Rent, etc. 50
Section 55-220 What Powers to Pass to Grantee or Devisee; When

	Attornment Unnecessary	50
Section 55-220.1	Perfection of Lien or Interest in Leases, Rents and Profits	50
Section 55-221	When Attornment Void	51
Section 55-221.1	Community Land Trusts Not Considered Landlords	51
Section 55-222	Notice to Terminate a Tenancy in Nonresidential Premises; Notice of Change in Use of Multifamily Residential Building	51
Section 55-222.1	Repealed	51
Section 55-223	Effect of Failure of Tenant to Vacate Premises at Expiration of Term	51
Section 55-224	When Tenant Deserts Premises, How Landlord May Enter, etc.	52
Section 55-225	Failure to Pay Certain Rents After Five Days' Notice Forfeits Right of Possession	52
Section 55-225.01	Sections Applicable Only to Certain Residential Tenancies	52
Section 55-225.02	Definitions for Residential Dwelling Units Subject to This Chapter	54
Section 55-225.1	Recovery of Possession Limited	57
Section 55-225.2	Remedies for Landlord's Unlawful Ouster, Exclusion or Diminution of Service	57
Section 55-225.3	Landlord to Maintain Dwelling Unit	57
Section 55-225.4	Tenant to Maintain Dwelling Unit	58
Section 55-225.5	Access Following Entry of Certain Court Orders	59
Section 55-225.6	Inspection of Dwelling Unit	60
Section 55-225.7	Disclosure of Mold in Dwelling Units	60
Section 55-225.8	Repealed	61
Section 55-225.9	Relocation of Tenant Where Mold Remediation Needs to be Performed in the Dwelling Unit	61
Section 55-225.10	Notice to Tenant in Event of Foreclosure	61
Section 55-225.11	Required Disclosures for Properties with Defective Drywall; Remedy for Nondisclosure	62
Section 55-226.11:1	Required Disclosures for Properties Located Adjacent to a Military Air Installation; Remedy for Nondisclosure	62
Section 55-225.12	Tenant's Assertion; Rent Escrow; Dwelling Units	63
Section 55-225.12:1	Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services	64
Section 55-225.13	Noncompliance by Landlord	65
Section 55-225.13:1	Landlord's Noncompliance as Defense to Action for Possession of Nonpayment of Rent	65
Section 55-225.14	Rent Escrow Required for Continuance of Tenant's Case	66
Section 55-225.15	Receipt Required for Certain Rental Payments; Upon Request	67
Section 55-225.16	Early Termination of Rental Agreements by Victims of Family Abuse, Sexual Abuse, or Criminal Sexual Assault	67
Section 55-225.17	Required Disclosures for Property Previously Used to Manufacture Methamphetamine; Remedy for Nondisclosure	67
Section 55-225.18	Retaliatory Conduct Prohibited	68
Section 55-225.19	Security Deposits	68
Section 55-225.20	Notice	70
Section 55-225.21	Application Deposit and Application Fee	71
Section 55-225.22	Terms and Conditions of Rental Agreement; Copy to Tenant; Rental Payments	72
Section 55-225.22:1	Prohibited Provisions in Rental Agreements	72
Section 55-225.23	Prepaid Rent; Maintenance of Escrow Account	73
Section 55-225.24	Landlord May Maintain Certain Insurance for Tenant	73
Section 55-225.25	Effect of Unsigned for Undelivered Rental Agreement	74
Section 55-225.26	Confidentiality of Tenant Records	74
Section 55-225.27	Landlord and Tenant Remedies for Abuse of Access	75
Section 55-225.28	Actions to Enforce Remedies Pertaining to Residential Tenancies	75
Section 55-225.29	Disclosure	75
Section 55-225.30	Notice to Tenants for Insecticide and Pesticide Use	76
Section 55-225.31	Limitation of Liability	76

Section 55-225.32 Tenancy at Will; Effect of Notice of Changes in Terms and Conditions Or Provisions of Tenancy 76
Section 55-225.33 Rules and Regulations 77
Section 55-225.34 Access; Consent; Correction of Nonemergency Property Conditions; Relocation of Tenant 77
Section 55-225.35 Fire or Casualty Damage 78
Section 55-225.36 Use and Occupancy by Tenant 79
Section 55-225.37 Tenant to Surrender Possession of Dwelling Unit 79
Section 55-225.38 Periodic Tenancy; Holdover Remedies 79
Section 55-225.39 Remedies for Absence, Nonuse and Abandonment 79
Section 55-225.40 Disposal of Property Abandoned by Tenants 80
Section 55-225.41 Authority of Sheriff to Store and Sell Personal Property Removed from Residential Premises; Recovery of Possession by Owner; Disposition or Sale 80
Section 55-225.42 Disposal of Property of Deceased Tenants 81
Section 55-225.43 Noncompliance with Rental Agreement; Monetary Penalty 81
Section 55-225.44 Barring Guest or Invitee of Tenant 83
Section 55-225.45 Sheriff Authorized to Serve Certain Notices; Fees Therefor 84
Section 55-225.46 Remedy by Repair, Etc.; Emergencies 84
Section 55-225.47 Landlord's Acceptance of Rent with Reservation 84
Section 55-225.48 Remedy After Termination 85
Section 55-225.49 Early Termination of Rental Agreement by Military Personnel 85
Section 55-225.50 Failure to Deliver Possession 86
Section 55-226 Nonresidential Building Destroyed or Lessee Deprived of Possession; Covenant to Pay Rent or Repair; Reduction of Rent 86
Section 55-226.1 Security Systems for Commercial Rental Property 86
Section 55-226.2 Energy Submetering, Energy Allocation Equipment, Sewer and Water Submetering Equipment, Ratio Utility Billings Systems; Local Government Fees 86
Section 55-227 Remedy for Rent and for Use and Occupation 89
Section 55-228 Who May Recover Rent, Etc. 89
Section 55-229 Who Liable for Rent 89
Section 55-230 When and by Whom Distress Made 89
Section 55-230.1 Procedure for Trial on Warrant in Distress 90
Section 55-231 On What Goods Levied On; What Extent Goods Liable; Priorities Between Landlord and Other Lienors 90
Section 55-232 Procedure When Distress Levied and Tenant Unable to Give Forthcoming Bond; What Defense May Be Made 90
Section 55-232.1 Repealed 91
Section 55-232.2 Review of Decision to Issue Ex Parte Order or Process; Claim of Exemption 91
Section 55-233 On What Terms Purchasers and Lienors Inferior to Landlord May Remove Goods; Certain Liens Not Affected 91
Section 55-234 When Goods of an Undertenant May Be Removed from Leased Premises 91
Section 55-235 When Officer May Enter by Force to Levy Distress or Attachment 91
Section 55-236 When Distress Not Unlawful Because of Irregularity, etc. 92
Section 55-237 Return of Execution; Process of Sale Thereunder 92
Section 55-237.1 Authority of Sheriffs to Store and Sell Personal Property Removed From Nonresidential Premises; Recovery of Possession by Owner; Disposition or Sale 92
Section 55-238 Remedy When Rent Is to Be Paid in Other Thing Than Money 93
Section 55-239 Proceedings to Establish Right of Reentry, and Judgment Therefor 93
Section 55-240 When Defendant Barred of Relief 93
Section 55-241 How Trustee or Mortgagee Relieved from the Forfeiture 93
Section 55-242 How Owner, etc., Relieved in Equity 93

Section 55-243 How Judgment of Forfeiture Prevented 94
Section 55-244 When Suit for Reentry Brought 94
Section 55-245 Written Act of Reentry to Be Returned and Recorded, and Certificate Thereof Published 94
Section 55-246 Fee of Clerk 95
Section 55-246.1 Who May Recover Rent or Possession 95
Section 55-247 How Person Entitled, etc., to Lands May Be Restored to His Possession 95
Section 55-248 Limitation of Suit, etc., Against Persons in Possession by Reentry 95

Virginia Civil Procedures Affecting Residential Tenancies
Code of Virginia

Default Judgments

Section 8.01-[illegible].2 Servicemembers Civil Relief Act; Default Judgment; Appointment of Counsel 97
Section 8.01-27.1 Additional Recovery in Certain Civil Actions Concerning Checks or Rejected Electronic Funds Transfers 97
Section 8.01-27.2 Civil Recovery for Giving Bad Check 98
Section 8.01-428 Setting Aside Default Judgment; Clerical Mistakes; Independent Actions to Relieve Party from Judgment or Proceedings; Grounds and Time Limitations 99

Unlawful Detainer Action

Section 8.01-124 Motion for Judgment in Circuit Court for Unlawful Entry or Detainer 99
Section 8.01-125 When Summons Returnable to Circuit Court; Jury 99
Section 8.01-126 Summons for Unlawful Detainer Issued by Magistrate or Clerk or Judge of a General District Court 100

Judgments and Possession

Section 8.01-128 Verdict and Judgment; Damages 102

Appeals from General District Court and Appeal Bonds

Section 8.01-129 Appeal from Judgment of General District Court 103
Section 8.01-130 Judgment Not to Bar Action of Trespass, Ejectment, or Unlawful Detainer 103

Sheriffs Authority to Store and Sell Personal Property

Section 8.01-156 Authority of Sheriffs, etc., to Store and Sell Personal Property Removed from Premises; Recovery of Possession by Owner; Disposition or Sale 103

Lead Based Paint Immunity

Section 8.01-226.7 Owner and Agent Compliance with Residential Lead-based Paint Notification; Maintenance Immunity 104
Section 8.01-226.12 Duty of Landlord and Managing Agent with Respect to Visible Mold 106

Service of Process

Section 8.01-296 Manner of Serving Process Upon Natural Persons 108

Exclusion of Witnesses

Section 8.01-375 Exclusion of Witnesses in Civil Cases 108

Judgments
Section 8.01-453 When and How Payment or Discharge Entered on Judgment Docket 109
Section 8.01-454 Judgment, When Paid, to be So Noted by Creditor 109
Section 8.01-458 From What Time Judgment to be a Lien on Real Estate; Docketing Revived Judgment 109
Section 16.1-94.01 When and How Payment or Discharge Entered on Judgment 110
Writs of Possession
Section 8.01-470 Writs on Judgments for Specific Property 110
Section 8.01-471 Time Period for Issuing Writs of Possession in Unlawful Entry and Detainer; When Returnable 111
Section 8.01-472 Writs on Judgments for Personal Property 111
Levy and Seizure
Section 8.01-478 On What Property Writ of Fieri Facias Levied; When Lien Commences 111

Garnishment
Section 8.01-511 Institution of Garnishment Proceedings 112
Section 8.01-511.1 Garnishee Inability to Determine Whether It Holds Property of Judgment Debtor 113
Section 8.01-512.1 Repealed 113
Section 8.01-512.2 Fee for Garnishee-Employers 113
Section 8.01-512.3 Form of Garnishment Summons 114
Section 8.01-512.4 Notice of Exemptions with Garnishment 115
Section 8.01-512.5 Hearing on Claim of Exemption from Garnishment 117
Section 8.01-513 Service upon Corporation or Limited Liability Company 117
Section 8.01-514 When Garnishment Summons Returnable 118
Section 8.01-515 How Garnishee Examined; Determining Exemption from Employee's Withholding Certificate; Amount Due Pursuant to Exemptions in § 34-21(a) 118
Section 8.01-516 Repealed 118
Section 8.01-516.1 Garnishment Dispositions 118
Section 8.01-517 Exemption of Portion of Wages; Payment of Excess into Court 119
Section 8.01-518 When Garnishee is Personal Representative of Decedent 119
Section 8.01-519 Proceedings where Garnishee Fails to Appear or Answer, or to Disclose His Liability 119
Section 8.01-520 Payment, etc., by Garnishee before Return of Summons 119
Section 8.01-521 Judgments as to Costs 119
Section 8.01-522 Wages and Salaries of State Employees 119
Section 8.01-523 Service upon Federal Government 120
Section 8.01-524 Wages and Salaries of City, Town and County Officials, Clerks and Employees 120
Section 8.01-525 Who are Officers and Employees of Cities, Towns and Counties 120

Jurisdiction of General District Courts
Section 16.1-77 Civil Jurisdiction of General District Courts 120
Section 16.1-77.1 When General District Court may give Judgment on Forthcoming Bond 121

Warrant in Debt
Section 16.1-79 Actions Brought on Warrant 121
Section 16.1-79.1 Electronic Filing of Civil Cases 122

Who Can File Pleadings
Section 16.1-88.03 Pleadings and Other Papers by Certain Parties Not Represented by Attorneys 122

Petition to Rehear Cases
Section 16.1-97.1 When a New Trial is Granted 123
Section 16.1-107 Requirements for Appeal 123
Section 16.1-122 Appeal 124

Forfeiture of Real Property for Illegal Drugs Being on the Property
Section 19.2-386.8 Exemptions 124

Water and Sewer Charges
Section 15.2-2119 Fees and Charges for Water and Sewer Services to a Property Owner 127
Section 15.2-2119.1 Credit for Excessive Water and Sewer Charges 127
Section 15.2-2119.4 Fees and Charges for Water and Sewer Services Provided To a Tenant or Lessee of the Property Owner 127
Section 15.2-5139 Lien for Charges 129

Selected Uniform Statewide Building Code Provisions

Code of Virginia

Rental Inspections
Section 36-105.1:1 Rental Inspections; Rental Inspection Districts; Exemptions; Penalties 131

Occupancy Standards
Section 36-105.4 Occupancy Standards for Residential Dwelling Units 133

Other Statutes

Landscape Cover Ordinance
Section 1 Harrisonburg Apartment Mulch Ordinance 135

Service Dogs
Section 51.5-44.1 Fraudulent Representation of a Service Dog or Hearing Dog; Penalty 135

Transfer of Security Deposits
Section 55-507 Transfer of Deposits Upon Purchase 135

Real Estate Broker Escrow Funds Upon Foreclosure
Section 54.1-2108.1 Protection of Escrow Funds Held by a Real Estate Broker in the Event of Foreclosure of Real Property; Required Deposits 135

Short Term Rentals/"Airbnb"
Section 4.1-100 Definitions 137
Section 4.1-200 Exemptions from Licensure 142
Section 15.2-983 Creation of Registry for Short Term Rental of Property 143

Smoke Alarms
Section 15.2-922 Smoke Alarms in Certain Buildings 144
Section 36-99.5 Smoke Alarms for Persons Who Are Deaf or Hearing Impaired 144

Towing
Section 46.2-1231 Ticketing, Removal, or Immobilization of Trespassing Vehicles by Owner or Operator of Parking or Other Lot or Building; Charges 145
Section 46.2-1232 Localities May Regulate Removal or Immobilization of Trespassing Vehicles .. 146

Section 46.2-1233 Localities May Regulate Towing Fees 147
Section 46.2-1233.1. Limitation on Charges for Towing and Storage of Certain Vehicles 147
Section 46.2-1233.2 Advisory Board 148
Section 46.2-1233.3 Improper Towing; Penalty 148

Virginia General District Court Civil Forms

Form DC-410 Service on the Secretary of the Commonwealth 150
Form DC-412 Warrant in Debt (Civil Claim for Money) 152
Form DC-413 Certificate of Mailing Posted Service 154
Form DC-418 Affidavit – Default Judgment Servicemembers Civil Relief Act 155
Form DC-421 Summons for Unlawful Detainer (Civil Claim for Eviction) 156
Form DC-422 Notice of Hearing to Establish Final Rent and Damages 158
Form DC-450 Suggestion for Summons in Garnishment 159
Form DC-451 Garnishment Summons 161
Form DC-454 Notice to Judgment Debtor – How to Claim Exemptions from Garnishment and Lien 163
Form DC-458 Notice of Satisfaction 165
Form DC-469 Request for Writ of Possession in Unlawful Detainer Proceedings 166

Fair Housing Laws & Regulations

Virginia Statutes:

Fair Housing Statutes

Section 36-96.1 Declaration of Policy 167
Section 36-96.1:1 Definitions 167
Section 36-96.2 Exemptions 169
Section 36-96.3 Unlawful Discriminatory Housing Practices 170
Section 36-96.3:1 Rights and Responsibilities with Respect to the Use of An Assistance Animal in a Dwelling 172
Section 36-96.3:2 Reasonable Accommodation; Interactive Process 173
Section 36-96.4 Discrimination in Residential Real Estate-Related Transactions; Unlawful Practices by Lenders, Insurers, Appraisers, etc.; Deposit of State Funds in Such Institutions 174
Section 36-96.5 Interference with Enjoyment of Rights of Others under this Chapter 175
Section 36-96.6 Certain Restrictive Covenants Void; Instruments Containing Such Covenants 175
Section 36-96.7 Familial Status Protection Not Applicable to Housing for Older Persons 175
Section 36-96.8 Powers of Real Estate Board and Fair Housing Board 175
Section 36-96.9 Procedures for Receipt or Initiation of Complaint; Notice to Parties; Filing of Answer 176
Section 36-96.10 Procedures for Investigation 177
Section 36-96.11 Reasonable Cause Determination and Effect 177
Section 36-96.12 No Reasonable Cause Determination and Effect 178
Section 36-96.13 Conciliation 178
Section 36-96.14 Issuance of a Charge 178
Section 36-96.15 Prompt Judicial Action 178
Section 36-96.16 Civil Action by Attorney General upon Referral of Charge by the Real Estate Board 179
Section 36-96.17 Civil Action by Attorney General; Matters Involving the Legality of any Local Zoning or Other Land Use Ordinance; Pattern or Practice

Cases; or Referral of Conciliation Agreement for Enforcement 179
Section 36-96.18 Civil Action; Enforcement by Private Parties 180
Section 36-96.19 Witness Fees 181
Section 36-96.20 Additional Powers of the Real Estate Board; Action on Real Estate Licenses 181
Section 36-96.21 Powers of Counties, Cities and Towns 181
Section 36-96.22 Repealed 181
Section 36-96.23 Construction of Law 181

Fair Housing Board
Section 54.1-2343 Definitions 182
Section 54.1-2344 Fair Housing Board; Membership; Terms; Chairman; Powers and Duties 182

Virginia Regulations:

Fair Housing Certification Regulations
18VAC62-20-10 Applicability 183
18VAC62-20-20 Definitions 183
18VAC62-20-30 Qualifications for Certification 183
18VAC62-20-40 Application Fees 184
18VAC62-20-50 Renewal Required 184
18VAC62-20-60 Qualification for Renewal 184
18VAC62-20-70 Procedures for Renewal 184
18VAC62-20-80 Failure to Renew 184
18VAC62-20-90 Fees for Renewal 184
18VAC62-20-100 Board Discretion to Deny Renewal 185
18VAC62-20-110 Maintenance of Certificates 185
18VAC62-20-120 Proprietary School Standards; Course Requirements; Instructor Requirements 185
18VAC62-20-130 School Renewal Procedures 185
18VAC62-20-140 Course Renewal Procedures 186
18VAC62-20-150 Instructor Renewal Procedures 186
18VAC62-20-160 Fees 186
18VAC62-20-170 Posting of Instructor Approval 186
18VAC62-20-180 Withdrawal of Approval 186

Fair Housing Regulations
18VAC135-50-10 Definitions 187
18VAC135-50-20 Purpose 187
18VAC135-50-30 General Construction 188
18VAC135-50-40 Repealed 188
18VAC135-50-50 Scope 188
18VAC135-50-60 Notice 188
18VAC135-50-70 Real Estate Practices Prohibited 188
18VAC135-50-80 Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental 188
18VAC135-50-90 Discrimination in Terms, Conditions and Privileges and in Services and Facilities 189
18VAC135-50-100 Other Prohibited Sale and Rental Conduct 189
18VAC135-50-110 Discriminatory Advertisements, Statements and Notices 190
18VAC135-50-120 Discriminatory Representations on the Availability of Dwellings 192
18VAC135-50-130 Blockbusting 192
18VAC135-50-140 Discrimination in the Provision of Brokerage Services 192
18VAC135-50-150 Repealed 192
18VAC135-50-160 Discrimination in the Making of Loans and in the Provision of other Financial Assistance 192
18VAC135-50-170 Discrimination in the Purchasing of Loans 193

18VAC135-50-180 Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance 193
18VAC135-50-190 Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property 194
18VAC135-50-200 General Prohibitions against Discrimination because of Handicap 194
18VAC135-50-210 Housing for Older Persons 197
18VAC135-50-212 Intent to Operate as 55 or Over Housing 198
18VAC135-50-215 Verification of Occupancy 199
18VAC135-50-217 Good Faith Defense against Civil Money Damages 199
18VAC135-50-220 Interference, Coercion or Intimidation 200
18VAC135-50-230 Repealed 200
18VAC135-50-260 Affirmative Advertising Efforts 200
18VAC135-50-270 Use of Words, Phrases, Symbols and Visual Aids 200
18VAC135-50-280 Selective Use of Advertising Media or Content 201
18VAC135-50-290 Fair Housing Policy and Practices 202
18VAC135-50-300 Submission of Information to File a Complaint 202
18VAC135-50-310 Who May File a Complaint 203
18VAC135-50-320 Persons Against Whom Complaints May be Filed 203
18VAC135-50-330 Filing a Complaint 203
18VAC135-50-340 Form and Content of a Complaint 203
18VAC135-50-350 Date of Filing of a Complaint 204
18VAC135-50-360 Amendment of Complaint 204
18VAC135-50-370 Service of Notice on Aggrieved Person 204
18VAC135-50-380 Respondent to be Notified of Complaint 204
18VAC135-50-390 Respondent May File Response 205
18VAC135-50-400 Investigations 205
18VAC135-50-410 Systemic Processing 205
18VAC135-50-420 Conduct of Investigation 206
18VAC135-50-430 Cooperation with Federal Agencies 206
18VAC135-50-440 Completion of Investigation 206
18VAC135-50-450 Final Investigative Report 206
18VAC135-50-460 Conciliation Process 206
18VAC135-50-470 Conciliation Agreement 206
18VAC135-50-480 Relief Sought for Aggrieved Persons During Conciliation 207
18VAC135-50-490 Conciliation Provisions Relating to Public Interest 207
18VAC135-50-500 Termination of Conciliation Process 207
18VAC135-50-510 Disclosure of Information Obtained During Conciliation 207
18VAC135-50-520 Review of Compliance with Conciliation Agreement 207
18VAC135-50-530 Reasonable Cause Determination 208
18VAC135-50-540 Local Zoning and Land Use 208
18VAC135-50-550 Pending Private Civil Action 208
18VAC135-50-560-590 Repealed 208

Virginia Guidance

Fair Housing Board Guidance on Assistance Animals 209

Select Federal Regulations and Guidance

Discrimination Effects Regulations 222
HUD Rule on Quid Pro Quo and Hostile Environment Harassment 224
HUD Guidance on Criminal Background Screening 227
HUD Guidance on Persons with Limited English Proficiency 237
Joint Statement of The Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications Under the Fair Housing Act – March 2008 246
Joint Statement of The Department of Housing and Urban Development and the Department of Justice – Reasonable Accommodations

Under the Fair Housing Act – May 2004 264

Website Links for Relevant Federal Statutes

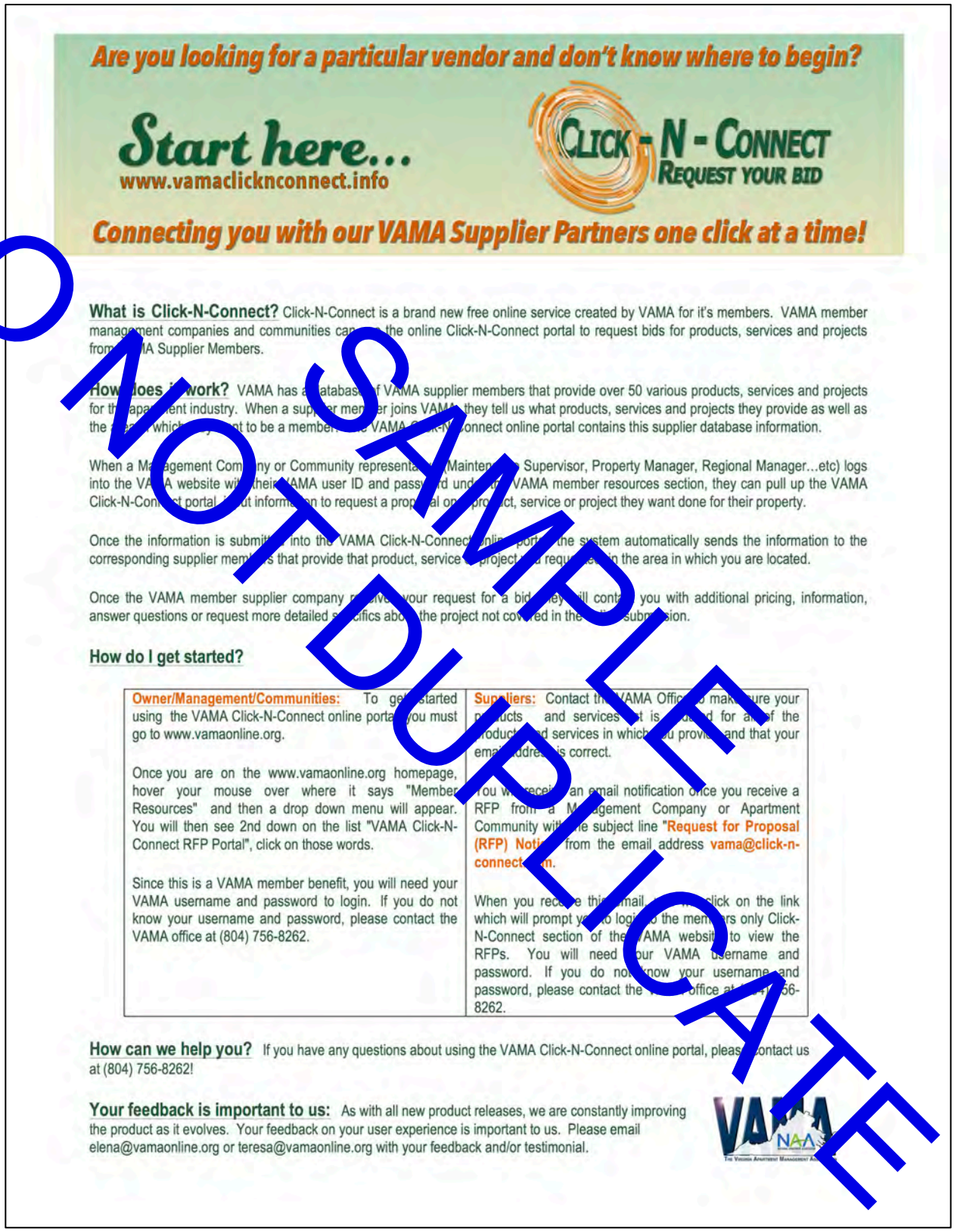
Americans with Disabilities Act 279
Fair Housing Laws 279
Lead Based Paint 279
Fair Debt Collection Practices Act 279
Fair Credit Reporting Act 279

Servicemembers Civil Relief Act

50 U.S.C. App. §511 Definitions 282
50 U.S.C. App. §512 Jurisdiction and Applicability of Act 283
50 U.S.C. App. §513 Protection of Persons Secondarily Liable 283
50 U.S.C. App. §514 Extension of Protections to Citizens Serving with Allied Forces 284
50 U.S.C. App. §515 Notification of Benefits 284
50 U.S.C. App. §515a Information for Members of the Armed Forces and Their Dependents on Rights and Protections of the Servicemembers Civil Relief Act 284
50 U.S.C. App. §516 Extension of Rights and Protections to Reserves Ordered to Report for Military Service and to Persons Ordered to Report for Induction 285
50 U.S.C. App. §517 Waiver of Rights Pursuant to Written Agreement 285
50 U.S.C. App. §518 Exercise of Rights under Act to Affect Certain Future Financial Transactions 285
50 U.S.C. App. §519 Legal Representatives 286
50 U.S.C. App. §521 Protection of Servicemembers Against Default Judgments 286
50 U.S.C. App. §522 Stay of Proceedings When Servicemember has Notice 287
50 U.S.C. App. §523 Fines and Penalties under Contracts 288
50 U.S.C. App. §524 Stay or Vacation of Execution of Judgments, Attachments, and Garnishments 288
50 U.S.C. App. §525 Duration and Term of Stays; Codefendants Not in Service 289
50 U.S.C. App. §526 Statute of Limitations 289
50 U.S.C. App. §527 Maximum Rate of Interest on Debts Incurred before Military Service 289
50 U.S.C. App. §531 Evictions and Distress 290
50 U.S.C. App. §532 Protection Under Installment Contracts for Purchase or Lease 291
50 U.S.C. App. §533 Mortgages and Trust Deeds 292
50 U.S.C. App. §534 Settlement of Stayed Cases Relating to Personal Property 292
50 U.S.C. App. §535 Termination of Residential or Motor Vehicle Leases 292
50 U.S.C. App. §535a Termination of Telephone Service Contracts 294
50 U.S.C. App. §536 Protection of Life Insurance Policy 295
50 U.S.C. App. §537 Enforcement of Storage Liens 296
50 U.S.C. App. §538 Extension of Protections to Dependents 296

Risk Mitigation Considerations

HUD'S Discriminatory Effects Regulations, Guidance on Criminal Background Screening and Limited English Proficiency 297
Mitigation of Mold Liability 299
Premises Liability 299
Issues with Lead Based Paint 300



Virginia Residential Landlord and Tenant Act
Code of Virginia. Chapter 13.2.

General Provisions.

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

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

Commentary: The Virginia Residential Landlord and Tenant Act (VRLTA) was passed by the Virginia General Assembly and became effective July 1, 1974, incorporating much of the Uniform Landlord Tenant Act adopted in some form in some 46 states, the VRLTA provides the legal framework for all multifamily dwelling units and many single-family dwelling units leased to tenants in Virginia.

The VRLTA is a comprehensive body of law but a landlord should not forget that other state, local and federal laws and regulations directly impact what can or cannot be done in a given situation. Management of rental of residential units is a complex business and requires education, skill and professionalism.

§ 55-248.3:1. Applicability of chapter.

A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality, its boards and commissions or other instrumentalities, or by the courts of the Commonwealth. Occupancy in a public housing unit or other housing unit that is a residential dwelling unit is subject to this chapter, however, if the provisions of this chapter are inconsistent with the regulations of the Department of Housing and Urban Development, such regulations shall control.

B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily residential dwelling units and multifamily dwelling unit located in the Commonwealth. However, where the landlord is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement, such landlord may opt out of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) by so stating in a rental agreement with a tenant. Such residential dwelling units shall be exempt from this chapter and the provisions of §§ 55-225.01 through 55-225.48 shall be applicable.

The provisions of this chapter shall not apply to instances where occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

C. Tenancies and occupancies that are not residential tenancies. The following occupancies are not residential tenancies under this chapter:

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

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

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

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or an former employee whose occupancy continues less than 60 days; or

D. Occupancy in hotel, motel, and extended stay facility.

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant to such action, which would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth. (2000, c. 760; 2001, c. 416; 2017, c. 730; 2018, cc. 50, 78, 221.)

Commentary: The 2018 legislation eliminated all of the differences between the Virginia Residential Landlord Tenant Act ("VRLTA") and the Virginia Landlord Tenant Act ("VLTA") for residential dwelling units. Further, the 2018 legislation expressly provides that every residential dwelling unit in the Commonwealth is regulated by the VRLTA, and effectively eliminates the previous opt-out option for a single family dwelling unit where the owner was not an owner-occupant and that owner owned 2 or less dwelling units, titled in the same name, for investment in the Commonwealth. Please note that the opt-out language still remains but since both the VRLTA and VLTA are identical, there is nothing to opt-out of.

§ 55-248.4. Definitions. -- When used in this chapter, unless expressly stated otherwise:

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

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

"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building; however, nothing in this definition shall be construed to apply to any nonresidential space in such building.

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

limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or other medium. A tenant may request copies of his tenant records pursuant to § 55-248.7:1.

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 55-248.12. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

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

"Written notice" means notice given in accordance with § 55-248.6, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is affixed. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter. (1974, c. 680; 1977, c. 427; 1987, c. 428; 1990, c. 55; 1991, c. 205; 1999, cc. 77, 258, 359, 390; 2000, cc. 780, 816; 2002, c. 531; 2003, cc. 355, 425, 855; 2004, c. 123; 2007, c. 634; 2008, cc. 489, 640; 2010, cc. 180, 530; 2012 cc 788; 2013, c. 563; 2014, c. 651; 2015, c. 596; 2016 c. 744.)

Commentary: These definitions are important, as they are the legal meaning of the words every time they appear in the VRLTA. You often use many of the words defined in this section in your day-to-day business. However, what the words mean to you conversationally may not be what they mean legally. The commentary references some key definitions, but your editors recommend you review each definition in 55-248.2 carefully.

For example, "rent" means all payments to the landlord under the rental agreement other than security deposits. Therefore, rent includes late charges, damages and any other landlord fees specified in the rental agreement. So if a tenant damages the front door to the apartment unit, which costs $300 for a landlord to repair, and the tenant does not pay the bill, under the VRLTA, the landlord should treat the nonpayment for the damages as a nonpayment of rent, and serve the tenant with a 5 day material noncompliance notice under Section 55-248.31.

The definition of "security deposit" provides the landlord the right to accept a commercial insurance policy as "damage insurance" in lieu of all or part of a security deposit. There is at least one provider of such policies doing business in Virginia. Since the definition of security deposit excludes damage insurance policies, the

premiums paid for such policies are not subject to the two-month cap on the total amount of security deposits under Section 55-248.15:1.

"Prepaid rent" is defined as rent paid more than one month prior to the rent due date. "Prepaid rent" must be placed in an escrow account of the landlord pursuant to Section 55-248.7:1, so it is clear that rent paid in the normal course of business, for example within the month of May for the June 1st rent payment, is not considered "prepaid rent". The definition makes it clear that only funds received more than one month prior to the rent due date must be placed in the landlord's escrow account. Please note there are also obligations applicable to escrow funds for real estate licensees under the Virginia Real Estate Licensing Law, Section 54.1-2100, et. seq.

The definition of utilities covers all utility services and makes it clear that a landlord can use ratio utility billing, also called RUBs programs, provided that the landlord so states in a lease (or lease addendum more than likely), and otherwise complies with the provisions of Section 55-226.2, in the Virginia Landlord Tenant Act, which applies to commercial and residential properties. Please also note that Section 55-226.2 makes it clear that a landlord can provide a utility package as part of the lease as additional rent, instead of charging only for the actual cost of such utilities plus an administrative surcharge.

The definition of "rental application" authorizes landlords to make copies of an applicant's driver's license. The federal law prohibits making a copy of a military issued photo credential. The definition also provides a landlord authority and guidance as to how to check credit, using either a social security number issued by the Social Security Administration or a taxpayer identification number issued by the IRS. The flip side is that it is not fair housing discrimination to require one of these two numbers be presented to the landlord, despite the fact that a non-US citizen may not have a social security number. Any non-US citizen in the US on a VISA lawfully can obtain a taxpayer identification number from the IRS without which a landlord may not be able to do a credit check. Your editors recommend you have a written policy included in your tenant selection criteria which details how the landlord will process a rental application for those applicants without a social security number.

Under the VRLTA provisions for bad checks, or failed electronic funds transfers, there are three categories that should be addressed in landlord documents:

1. *A "bad check fee", which permits the landlord to recover the amount charged by the landlord's bank for the tenant's bad check, or failed electronic funds transfer, which is usually somewhere in the range of $35.00 to $50.00.*

2. *A $50 administrative charge in addition to what the bank charges the landlord, to cover the landlord's administrative time in handling the bad check given by the tenant, or the tenant's failed electronic funds transfer. The cap on the administrative charge is $50.00. This authority is contained in the definition of "Processing fee for payment of returned bad check" in Section 55-248.4.*

3. *A civil penalty in the amount of the lesser of $250.00 or three times the amount of the check or failed electronic funds transfer pursuant to Section 8.01-27[illegible]. The authority to include this claim on the landlord's unlawful detainer is set out in Section 55-248.31(f) in the first sentence, which expressly authorizes a landlord to seek this civil penalty, as part of the unlawful detainer filed pursuant to Section 8.01-126.*

   The property management agreement should specify whether the landlord or the property manager is entitled to retain each of these "bad check" fees.

The definitions clarify what is a refundable "application deposit", which becomes a "security deposit" upon lease commencement, and a separate definition for "application fee", which is nonrefundable. Nonrefundable "application fees" are capped at $50, except in cases involving dwelling units subject to a HUD subsidy, where the "application fee" is capped at $32. The cap on application fees does not include the actual costs paid by landlord to third parties for credit or other background checks for a tenant applicant, which also may be separately charged to the applicant.

The definition of "tenant records" provides legal authority to digitize tenant records. Please see Section 55-248.9:1 that authorizes a landlord to charge a tenant for multiple copies of paper records requested by a tenant.

In terms of maintaining records, please remember that an infant child of a tenant has until their age of majority (age 18), plus 2 years to sue for negligence and 3 years to sue on a contract (the lease), so it may well be necessary to access records as long as 21 years after an incident. Under the VRLTA, tenant records are required to be maintained by the landlord for a minimum of 3 years. Electronic records are sufficient with the caveat that you should have a disaster recovery back-up of all electronic records.

The definition of "written notice" adopts the definition contained in the Uniform Electronic Transactions Act ("UETA") such that the landlord or any other person authorized by the landlord, like a bank or other third party, can send "written notices" electronically to the tenants. This definition, along with language in Section 55.248.6, enables the landlord and tenant to send electronic messages to each other, so long as the lease so

provides and tenant does not opt-out. The practice tip here is to include such express authority in your lease. This also means you have the authority to require automatic debit payments of rent.

There is an express distinction in the VRLTA between the "effective date" of the lease agreement, or the date the landlord and tenant sign the lease, and then a separate date for the "commencement date" of the lease agreement, which is the date the tenant has the right to move into the dwelling unit. Well-drafted language in leases under the VRLTA will make it clear that a tenant is responsible for breach of the lease between the effective date and the commencement date of the lease. If a tenant breaches a lease, the tenant is responsible under Section 55-248-35 for actual damages, which is the full balance of a 12-month lease, subject to the landlord's duty to mitigate damages and re-rent the dwelling unit.

§ 55-248.5. Repealed. (2017, c. 730.)

§ 55-248.6. Notice.

A. As used in this chapter:

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

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

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

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

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

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

F. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice under this chapter. The landlord may also engage an attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01. Nothing herein shall be construed to preclude use of an electronic signature as defined in § 59.1-480, or an electronic notarization as defined in § 47.1-2, in any written notice under this chapter or legal process under Title 8.01. (1974, c. 680; 1982, c. 260; 1993, c. 754; 1998, c. 260; 2000, c. 760; 2008, cc. 489, 640; 2017, c. 730.)

Commentary: This section addresses how notice is given, received and what constitutes legal notice. Even without written notice, either party (landlord or tenant) is deemed to have notice of a situation if they have actual knowledge, received a verbal or written notice, or from the surrounding facts or circumstances knew or

Other Statutes

Landscape Cover Ordinance

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

Commentary: This legislation was passed by the 2016 General Assembly as a "Section 1" bill. That means it has the force of law and is contained in the Virginia Acts of the Assembly but is not printed in the Code of Virginia.

The City Council in Harrisonburg passed an ordinance in 2015 that said if a property owner did not remove the mulch from their property prior to July 1, 2016, that a property owner could be arrested for a Class One misdemeanor, which has a criminal penalty of 12 months in jail and a $2500 fine. VAMA took the lead on this legislation that was signed into law by the Governor and was effective July 1, 2016. VAMA was concerned not only about the apartment owners in the City of Harrisonburg but that other localities may pass similar ordinances across the Commonwealth of Virginia.

The City of Harrisonburg amended its ordinance in April of 2016 but still did not comply with this legislation. Under the 2016 ordinance in Harrisonburg, if a property owner restores their mulch bed, they can be arrested for a Class One misdemeanor, which has a criminal penalty of 12 months in jail and a $2500 fine. VAMA filed a lawsuit in the Harrisonburg Circuit Court and the judge ruled in favor of the City. VAMA then led a coalition of business and real property organizations in the 2018 General Assembly and successfully passed legislation to protect the vested rights of property owners from localities like Harrisonburg requiring a retrofit of landscape cover materials. Unfortunately, the Governor vetoed the legislation. Now, any locality in the Commonwealth can adopt an ordinance like the one adopted by the City of Harrisonburg.

Service Dogs

§ 51.5-44.1 Fraudulent representation of a service dog or Hearing Dog; Penalty. -- Any person who knowingly and willfully fits a dog with a harness, collar, vest, or sign, or uses an identification card commonly used by a person with a disability, in order to represent that the dog is a service dog or hearing dog to fraudulently gain public access for such dog pursuant to provisions in § 51.5-44 is guilty of a Class 4 misdemeanor. (2016, c. 575)

Commentary: This legislation addresses "service animals" under the Americans with Disability Act ("ADA"), it has no effect on "assistance animals" under the Fair Housing Act. See the commentary on assistance animals under the Fair Housing Act.

Transfer of Deposits Upon Purchase.

§ 55-507. Transfer of deposits upon purchase. -- The current owner of rental property shall transfer any security deposits and any accrued interest on the deposits in his possession to the new owner at the time of the transfer of the rental property. If the current owner has entered into a written property management agreement with a managing agent in accordance with the provisions of subsection E of § 54.1-2135, the current owner shall give written notice to the managing agent requesting payment of such security deposits to the current owner prior to settlement with the new owner. Upon receipt of the written notice, the managing agent shall transfer the security deposits to the current owner and provide written notice to each tenant that his security deposit has been transferred to the new owner in accordance with this section. (2017, c. 402.)

Commentary: This section provides a property manager a clear guideline to follow on how to transfer a security deposit to a landlord. This legislation should enable a property manager to avoid the issue of transfer of security deposits between managing agents.

Real Estate Broker Escrow Funds Upon Foreclosure

§ 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, 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.

4. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon pursuant to § 55-225.10, the foreclosure acts as a termination of the rental agreement by the landlord and the tenant may remain in possession of such dwelling. If rent is paid to a real estate licensee acting on behalf of the landlord as a managing agent, such property management agreement having been entered into prior to and in effect at the time of the foreclosure sale, the managing agent may collect the rent and shall place it into an escrow account by the end of the fifth business banking day following receipt.

5. If there is in effect at the date of the foreclosure sale a written property management agreement between the landlord and a real estate licensee licensed pursuant to the provisions of § 54.1-2106.1, the foreclosure shall convert the property management agreement into a month-to-month agreement between the successor landlord and the real estate licensee acting as a managing agent, except in the event that the terms of the original property management agreement between the landlord and the real estate licensee acting as a managing agent require an earlier termination date. Unless altered by the parties, the terms of the original property management agreement that existed between the landlord and the real estate licensee acting as a managing agent shall govern the agreement between the successor landlord and the real estate licensee acting as a managing agent. The property management agreement may be terminated by either party upon provision of written notice to the other party at least 30 days prior to the intended termination date. Any funds received or held by the real estate licensee acting as a managing agent shall be disbursed only in accordance with the terms of the property management agreement or as otherwise provided by 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.

5. Except in the event of foreclosure, if a real estate licensee acting on behalf of a landlord client as a managing agent elects to terminate the property management agreement, the licensee may transfer any funds held in escrow by the licensee on behalf of the landlord client to the landlord client without his consent, provided that the real estate licensee provides written notice to each tenant that the funds have been so transferred. In the event of foreclosure, a real estate licensee shall not transfer any funds to a landlord client whose property has been foreclosed upon.

6. A real estate licensee acting on behalf of a landlord client as a managing agent who complies with the provisions of this section shall have immunity from any liability for such compliance, in the absence of gross negligence or intentional misconduct. (2010, c. 181; 2013, c. 489; 2017, cc. 67, 394)

Short Term Rentals/"Airbnb"

§ 4.1-100. Definitions. -- As used in this title, unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, powder or crystal, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Art instruction studio" means any commercial establishment that provides to its customers all required supplies and step-by-step instruction in creating a painting or other work of art during a studio instructional session.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided. For purposes of the licensing requirements of this title, "bed and breakfast establishment"

includes any property offered to the public for short-term rental, as that term is defined in § 15.2-983, other than a hotel as defined in this section, regardless of whether a meal is offered to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes, processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied the grapes, fruits, or other agricultural products used in the production of the wine. The contract winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm winery for its services.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the type normally sold in grocery stores.

"Day spa" means any commercial establishment that offers to the public both massage therapy, performed by persons licensed in accordance with § 54.1-3029, and barbering or cosmetology services performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means (i) an establishment (a) located on a farm in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than

21 percent alcohol by volume or (b) located in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine manufactured by the institution shall be used solely for research and educational purposes, (c) the wine manufactured by the institution shall be stored on the premises of such farm winery that shall be separate and apart from all other facilities of the institution, and (d) such farm winery is operated in strict conformance with the requirements of this clause (ii) and Board regulations. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event that such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth. For purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation," nothing in the definition of "land zoned agricultural" shall otherwise limit or affect local zoning authority.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty items relating to history, original and handmade arts and products, collectibles, crafts, and floral arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

"Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such persons facilities for manufacturing, fermenting and bottling such wine or beer.

"Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

"Government store" means a store established by the Authority for the sale of alcoholic beverages.

"Hotel" means any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to persons, and which has four or more bedrooms. It shall also mean the person who operates such hotel.

"Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this title.

"Internet beer retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, Internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Internet wine retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

"Licensed" means the holding of a valid license granted by the Authority.

"Licensee" means any person to whom a license has been granted by the Authority.

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured and distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the equity ownership of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such equity ownership. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Authority in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii)

offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Authority may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for, keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the Virginia Alcoholic Beverage Control Authority whom the Board has designated as a law-enforcement officer pursuant to § 4.1-105.

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by such retail licensee. (2017, cc. 152, 157, 160, 492, 585, 741; 2018, c. 337.)

§ 4.1-200. Exemptions from licensure. -- The licensure requirements of this chapter shall not apply to:

1. A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, who administers or causes to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes. Such person may charge for the alcoholic beverages so administered, and carry such stock as may be necessary for this purpose. No charge shall be made of any patient for the alcoholic beverages so administered to him where the same have been supplied to the institution by the Board free of charge.

2. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicine containing sufficient medication to prevent it from being used as a beverage.

3. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicinal preparation manufactured in accordance with formulas prescribed by the United States pharmacopoeia, national formulary, patent and proprietary preparations; and other bona fide medicinal and technical preparations; which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which are manufactured and sold to be used exclusively as medicines and not as beverages.

4. The manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

5. The manufacture and sale of food products known as flavoring extracts which are manufactured and sold for cooking and culinary purposes only and not sold as beverages.

6. Any person who manufactures at his residence or at a gourmet brewing shop for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both, in an amount not to exceed the limits permitted by federal law.

   Any person who manufactures wine or beer in accordance with this subdivision may remove from his residence an amount not to exceed fifty liters of such wine or fifteen gallons of such beer on any one occasion for (i) personal or family use, provided such use does not violate the provisions of this title or Board regulations; (ii) giving to any person to whom wine or beer may be lawfully sold an amount not to exceed (a) one liter of wine per person per year or (b) seventy-two ounces of beer per person per year, provided such gift is for noncommercial purposes; or (iii) giving to any person to whom beer may lawfully be sold a sample of such wine or beer, not to exceed (a) one ounce of wine by volume or (b) two ounces of beer by volume for on-premises consumption at events organized for judging or exhibiting such wine or beer, including events held on the premises of a retail licensee. Nothing in this paragraph shall be construed to authorize the sale of such wine or beer.

   The provision of this subdivision shall not apply to any person who resides on property on which a winery, farm winery, or brewery is located.

7. Any person who keeps and possesses lawfully acquired alcoholic beverages in his residence for his personal use or that of his family. However, such alcoholic beverages may be served or given to guests in such residence by such person, his family or servants when (i) such guests are 21 years of age or older or are accompanied by a parent, guardian, or spouse who is 21 years of age or older, (ii) the consumption or possession of such alcoholic beverages by family members or such guests occurs only in such residence where the alcoholic beverages are allowed to be served or given pursuant to this subdivision, and (iii) such service or gift is in no way a shift or device to evade the provisions of this

title. The provisions of this subdivision shall not apply when a person serves or provides alcoholic beverages to a guest occupying the residence as the lessee of a short-term rental, as that term is defined in § 15.2-983, regardless of whether the person who permanently resides in the residence is present during the short-term rental.

8. Any person who manufactures and sells cider to distillery licensees, or any person who manufactures wine from grapes grown by such person and sells it to winery licensees.

9. The sale of wine and beer in or through canteens or post exchanges on United States reservations when permitted by the proper authority of the United States.

10. The keeping and consumption of any lawfully acquired alcoholic beverages at a private meeting or private party limited in attendance to members and guests of a particular group, association or organization at a banquet or similar affair, or at a special event, if a banquet license has been granted. However, no banquet license shall be required for private meetings or private parties limited in attendance to the members of a common interest community as defined in § 54.1-2345 and their guests, provided (i) the alcoholic beverages shall not be sold or charged for in any way, (ii) the premises where the alcoholic beverages are consumed is limited to the common area regularly occupied and utilized for such private meetings or private parties, and (iii) such meetings or parties are not open to the public. (2017, c. 741.)

§ 15.2-983. Creation of registry for short-term rental of property.

A. As used in this section:

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short-term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

B. 1. Notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry.

2. No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

C. 1. If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed $500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. Such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. Upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental.

2. Such ordinance may further provide that an operator required to register may be prohibited from offering a specific property for short-term rental in the locality upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term rental.

D. Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.). (2017, c. 741.)

Commentary: This section addresses short-term rentals like an "Airbnb" type platform. This enabling piece of legislation allows local governments to regulate short-term rentals by local zoning. But, since existing tax law prohibits requiring a landlord from the requirement to obtain a business license and to pay "BPOL" taxes, this legislation authorizes a limited registration program by ordinance to address short-term rentals. Your editors recommend you revisit the "assignment and sublease" provisions in your lease to make sure you are adequately covered for short-term rentals. This section also expressly defers to any landlord lease provisions (or association limitations) on short-term rentals.

Smoke Alarms

§ 15.2-922 Smoke alarms in certain buildings.

A. Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke alarms be installed in the following structures or buildings if smoke alarms have not been installed in accordance with the Uniform Statewide Building Code (§ 36-97 et seq.): (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used, offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons, and (iii) any rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations. Smoke alarms installed pursuant to this section shall be installed only in conformance with the provisions of the Uniform Statewide Building Code and shall be permitted to be either battery operated or AC powered. Such installation shall not require new or additional wiring and shall be maintained in accordance with the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code. Nothing herein shall be construed to authorize a locality to require the upgrading of any smoke alarms provided by the building code in effect at the time of the last renovation of such building, for which a building permit was required, or as otherwise provided in the Uniform Statewide Building Code.

B. The ordinance may require the owner of a rental unit to provide the tenant a certificate that all smoke alarms are present, have been inspected by the owner, his employee, or an independent contractor, and are in good working order. Except for smoke alarms located in public or common areas of multifamily buildings, interim testing, repair, and maintenance of smoke alarms in rented or leased dwelling units shall be the responsibility of the tenant in accordance with § 55-225.4 or 55-248.16, as *applicable. (2018, cc. 41, 81.)*

Commentary: The 2018 legislation requires every locality with a local smoke alarm ordinance to conform to state law and the Uniform Statewide Building Code on or before July 1, 2019.

§ 36-99.5 Smoke alarms for persons who are deaf or hearing impaired.

Smoke alarms for persons who are deaf or hearing impaired shall be installed only in conformance with the provisions of the current Building Code and maintained in accordance with the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Building Code. Such alarms shall be provided by the landlord or proprietor, upon request by a tenant of a rental unit or a person living with such tenant who is deaf or hearing impaired as referenced by the Virginia Fair Housing Law (§ 36-96.1 et seq.), or upon request by an occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;

2. All boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All residential rental dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke alarm in the tenant's unit in accordance with § 55-225.4 or 55-248.16, as applicable.

A hotel or motel shall have available no fewer than one such smoke alarm for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke alarms for persons who are deaf or hearing impaired. Visual alarms shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke alarm, not to exceed the original cost or replacement cost, whichever is greater, of such smoke alarm. Rental fees shall not be increased as compensation for this requirement.

A landlord of a rental unit shall provide a reasonable accommodation to a person who is deaf or hearing impaired who requests installation of a smoke alarm that is appropriate for persons who are deaf or hearing impaired if such accommodation is appropriate in accordance with the Virginia Fair Housing Law (§ 36-96.1 et seq.). (2018, cc. 41, 81.)

Commentary: The 2018 legislation provides that tenants or tenant-applicants with a hearing impairment be afforded the same rights as any other tenant requesting a reasonable accommodation.

Towing

§ 46.2-1231. Ticketing, removal, or immobilization of trespassing vehicles by owner or operator of parking or other lot or building; charges. -- The owner, operator, or lessee of any parking lot, parking area, or parking space in a parking lot or area or any part of a parking lot or area, or of any other lot or building, including any county, city, or town or authorized agent of the person having control of such premises may have any vehicle occupying the lot, area, space, or building without the permission of its owner, operator, lessee, or authorized agent of the one having the control of the premises, removed by towing or otherwise to a licensed garage for storage until called for by the owner or his agent if there are posted at all entrances to the parking lot or area signs clearly and conspicuously disclosing that such vehicle, if parked without permission, will be removed, towed, or immobilized. Such signs shall, at a minimum, include the nonemergency telephone number of the local law-enforcement agency or the telephone number of the responsible towing and recovery operator to contact for information related to the location of vehicles towed from that location. The requirements of this section relating to the posting of signs by an owner, operator, or lessee of any parking lot, parking area or space shall not apply to localities in which the local governing body has adopted an ordinance pursuant to § 46.2-1232.

Whenever a trespassing vehicle is removed or towed as permitted by this section, notice of this action shall forthwith be given by the tow truck operator to the State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. It shall be unlawful to fail to report such tow as required by this section and violation of the reporting requirement of this section shall constitute a traffic infraction punishable by a fine of not more than $100. Such failure to report shall limit the amount which may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

All businesses engaged in towing vehicles without the consent of their owners shall prominently display (i) at their main place of business and (ii) at any other location where towed vehicles may be reclaimed a comprehensive list of all their fees for towing, recovery, and storage services, or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectable from any motor vehicle owner whose vehicle is towed, recovered, or stored without his consent. At the time a vehicle owner or agent reclaims a towed vehicle, such towing and recovery operator, if located in Planning District 8, shall provide

a written receipt that provides a telephone number or website available for customer complaints. A locality located wholly or partially in Planning District 8 may require additional information to be included on such receipt.

Notwithstanding the foregoing provisions of this section, if the owner or representative or agent of the owner of the trespassing vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed $25 or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

In lieu of having a trespassing vehicle removed by towing or otherwise, the owner, operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause the vehicle to be immobilized by a boot or other device that prevents a vehicle from being moved by preventing a wheel from turning, provided that the boot or other device does not damage the vehicle or wheel. The charge for the removal of any boot or device shall not exceed $25 or such other limit as the governing body of the county, city, or town may set by ordinance. In lieu of having the vehicle removed by towing or otherwise, or in lieu of causing the vehicle to be immobilized, the owner, operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause to have an authorized local government official or law-enforcement officer issue, on the premises, a notice of the violation of a parking ordinance or regulation created pursuant to § 46.2-1220 or § 46.2-1221 to the registered owner of the vehicle.

This section shall not apply to police, fire or public health vehicles or where a vehicle, because of a wreck or other emergency, is parked or left temporarily on the property of another. The governing body of every county, city, and town may by ordinance set limits on fees and charges provided for in this section. (Code 1950, § 46-541; 1952, c. 462; 1954, c. 435; 1958, c. 541, § 46.1-551; 1978, cc. 202, 335; 1979, c. 132; 1983, c. 34; 1985, c. 387; 1987, cc. 147, 152, 382; 1988, cc. 471, 701; 1989, c. 727; 1990, c. 502; 1991, c. 221; 1993, c. 394; 1994, c. 615; 2003, c. 305; 2006, c. 874; 2011, 2017, c. 825.)

Commentary: VAMA was a leader in the discussions surrounding this legislation to make sure there was not a "second signature" requirement for a tow to take place. Most landlords have entered into a towing contract to protect the integrity of the parking policies for their communities. Along the way, there were proposals by some to require a property manager to separately authorize each tow at the time of the tow (think 2 am) before the tow would be lawful.

§ 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.

A. The governing body of any county, city, or town may by ordinance regulate the removal of trespassing vehicles from property by or at the direction of the owner, operator, lessee, or authorized agent in charge of the property. In the event that a vehicle is towed from one locality and stored in or released from a location in another locality, the local ordinance, if any, of the locality from which the vehicle was towed shall apply.

B. No local ordinance adopted under authority of this section shall require that any towing and recovery business also operate as or provide services as a vehicle repair facility, body shop, filling station, or any business other than a towing and recovery business.

C. Any such local ordinance may also require towing and recovery operators to (i) obtain and retain photographs or other documentary evidence substantiating the reason for the removal; (ii) post signs at their main place of business and at any other location where towed vehicles may be reclaimed conspicuously indicating (a) the maximum charges allowed by local ordinance, if any, for all their fees for towing, recovery, and storage services and (b) the name and business telephone number of the local official, if any, responsible for handling consumer complaints; (iii) obtain at the time the vehicle is towed, verbal approval of an agent designated in the local ordinance who is available at all times; and (iv) obtain, at the time the vehicle is towed, if such towing is performed during the normal business hours of the owner of the property from which the vehicle is being towed, the written authorization of the owner of the property from which the vehicle is towed, or his agent. Such written authorization, if required, shall be in addition to any written contract between the towing and recovery operator and the owner of the property or his agent, except for vehicles being towed from a locality within Planning District 8 or Planning District 16, which shall not require written authorization if such written contract is in place. Any such written contract governing a property located within Planning District 8 or Planning

District 16 shall clearly state the terms on which towing and recovery operators may monitor private lots on behalf of property owners. For the purposes of this subsection, "agent" shall not include any person who either (a) is related by blood or marriage to the towing and recovery operator or (b) has a financial interest in the towing and recovery operator's business.

D. Any such ordinance adopted by a locality within Planning District 8 may require towing companies that tow vehicles from the county, city, or town adopting the ordinance to other localities, provided that the stored or released location is within the Commonwealth of Virginia and within 10 miles of the point of origin of the actual towing, (i) to obtain from the locality from which such vehicles are towed a permit to do so and (ii) to submit to an inspection of such towing company's facilities to ensure that the company meets all the locality's requirements, regardless of whether such facilities are located within the locality or elsewhere. The locality may impose and collect reasonable fees for the issuance and administration of permits as provided for in this subsection. Such ordinance may also provide grounds for revocation, suspension, or modification of any permit issued under this subsection, subject to notice to the permittee of the revocation, suspension, or modification and an opportunity for the permittee to have a hearing before the governing body of the locality or its designated agent to challenge the revocation, suspension, or modification. Any tow truck driver who removes or tows a vehicle, pursuant to any such ordinance, that is occupied by an unattended companion animal as defined in § 3.2-6500 shall, upon such removal, immediately notify the animal control office of the locality in which the vehicle is being removed or towed. Nothing in this subsection shall be applicable to public safety towing. (Code 1950, § 46-541; 1952, c. 352; 1954, c. 435; 1958, c. 541, § 46.1-551; 1978, cc. 202, 335; 1979, c. 132; 1983, c. 34; 1985, c. 375; 1989, cc. 17, 727; 1990, cc. 502, 573; 2006, cc. 874, 891; 2009, cc. 186, 544; 2012, cc. 149, 812; 2017, c. 825; 2018, cc. 411, 412.)

§ 46.2-1233. Localities may regulate towing fees. The governing body of any locality may by ordinance set reasonable limits on fees charged for the removal of motor vehicles, trailers, and parts thereof left on private property in violation of § 46.2-1231, and for the removal of trespassing vehicles under § 46.2-1215, taking into consideration the fair market value of such removal.

Localities in Planning District 8 and Planning District 16 shall establish by ordinance (i) a hookup and initial towing fee of $135 and (ii) for towing a vehicle between seven o'clock p.m. and eight o'clock a.m. or on any Saturday, Sunday, or holiday, an additional fee of $25 per instance; however, such ordinance shall also provide that in no event shall more than two such additional fees be charged for towing any vehicle. (Code 1950, § 46-541; 1952, c. 352; 1954, c. 435; 1958, c. 541, § 46.1-551; 1978, cc. 202, 335; 1979, c. 132; 1983, c. 34; 1985, c. 375; 1989, cc. 17, 727; 1990, cc. 502, 571, 573; 2018, c. 476; 2018, cc. 411, 412.)

§ 46.2-1233.1. Limitation on charges for towing and storage of certain vehicles.

A. Unless different limits are established by ordinance of the local governing body pursuant to § 46.2-1233, as to vehicles towed or removed from private property, no charges imposed for the towing, storage, and safekeeping of any passenger car removed, towed, or stored without the consent of its owner shall be in excess of the maximum charges provided for in this section. No hookup and initial towing fee of any passenger car shall exceed $150. For towing a vehicle between seven o'clock p.m. and eight o'clock a.m. or on any Saturday, Sunday, or holiday, an additional fee of no more than $25 per instance may be charged; however, in no event shall more than two such fees be charged for towing any such vehicle. No charge shall be made for storage and safekeeping for a period of 24 hours or less. Except for fees or charges imposed by this section or a local ordinance adopted pursuant to § 46.2-1233, no other fees or charges shall be imposed during the first 24-hour period.

B. The governing body of any county, city, or town may by ordinance, with the advice of an advisory board established pursuant to § 46.2-1233.2, (i) provide that no towing and recovery business having custody of a vehicle towed without the consent of its owner impose storage charges for that vehicle for any period during which the owner of the vehicle was prevented from recovering the vehicle because the towing and recovery business was closed and (ii) place limits on the amount of fees charged by towing and recovery operators. Any such ordinance limiting fees shall also provide for periodic review of and timely adjustment of such limitations. (1990, c. 266; 1993, c. 598; 2006, cc. 874, 891; 2013, c. 592; 2018, cc. 324, 363.)

§ 46.2-1233.2. Advisory board. -- Prior to adopting or amending any ordinance pursuant to § 46.2-1232 or § 46.2-1233, the local governing body shall appoint an advisory board to advise the governing body with regard to the appropriate provisions of the ordinance. Voting members Members of the advisory board shall only consist of an equal number of representatives of local law-enforcement agencies and representatives of licensed towing and recovery operators, and one member of the general public. Any such advisory board shall meet at least once per year at the call of the chairman of the advisory board, who shall be elected annually from among the voting members of the advisory board by a majority vote. The chairmanship of any such advisory board for any locality within Planning District 8 shall be for a term of one year and rotate annually between a representative of a local law-enforcement agency, a representative of a licensed towing and recovery operator, and one member of the general public. (1993, c. 405; 2006, cc. 874, 891; 2017, c. 825.)

§ 46.2-1233.3. Improper towing; penalty.

A. This section shall apply only to tow truck drivers and towing and recovery operators removing a vehicle without the consent of its owner from a location in Planning District 8.

B. In addition to any action brought pursuant to subsection B of § 46.2-119, any tow truck driver who violates subsection A of § 46.2-[illegible] or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, or any towing or recovery operator who violates subsection B of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, is subject to a civil penalty of $1[illegible] per violation. Such penalty shall be collected by the Office of the Attorney General, and the proceeds shall be deposited into the Literary Fund. (2017, c. 825)

Risk Mitigation

HUD'S Discriminatory Effects Regulations, Guidance on Criminal Background Screening and Limited English Proficiency

On February 15, 2013, HUD adopted new discriminatory effects regulations, a copy of which is included in this Redbook. HUD then adopted new guidance on April 4, 2016, regarding the use of criminal history as part of a resident screening process, and on September 15, 2016, regarding fair housing protections for persons with limited English proficiency. Copies of both these HUD guidance documents are included in this Redbook.

Criminal Background Screening

This guidance is based upon HUD's discriminatory effects regulations, and confirms that a criminal screening policy may be found to violate the Fair Housing Act if it has a discriminatory effect on a protected class. There is a 3 prong-test used to determine whether a particular policy has a discriminatory effect in violation of the Fair Housing Act. The test, and its application to criminal screening policies as described in the guidance, is set forth below:

1. Does the policy have a discriminatory effect on a protected class?
   HUD cites statistics indicating that certain protected classes are denied housing based upon prior criminal history disproportionately to non-protected classes. Local, state or national statistics and data may be used to show a discriminatory effect.

2. Is the policy necessary to achieve a "substantial, legitimate, nondiscriminatory interest"?
   A. A record of a prior *arrest* is not sufficient to deny an applicant.
   B. Screening policies based upon prior *convictions* may be permissible, but they must consider the nature, severity and how recent the criminal conduct in question was. For example, an across-the-board ban on all felonies is not permissible.

3. Is there a less discriminatory alternative to achieve such interest?
   It is not entirely clear what is required of the housing provider to show a less discriminatory alternative is not available. For example, the language in the guidance states "individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account." They go on to list such "individualized evidence" to be: facts and circumstances surrounding the criminal conduct; age at the time of the crime; evidence of good tenant history before and/or after the conviction; and evidence of rehabilitation efforts. It is of course exactly this type of individualized assessment that landlords and property managers generally seek to avoid in the fair housing area, as it may lead to different outcomes for different people.

There are also a few other things to note in the criminal screening guidance. First, there is a narrow exemption for prior convictions for drug manufacturing and distribution only, and applicants with these prior convictions may be denied, even if there is a discriminatory effect on a protected class. However, prior convictions for other drug-related crimes (such as drug possession), would still need to be evaluated under the above 3-prong test, and your "standard" screening criteria. Second, all intentional discrimination in the implementation of criminal screening policies is prohibited.

Your editors therefore recommend that all landlords and property managers carefully evaluate their existing resident selection criteria relating to prior criminal history for compliance with the above requirements, and make any necessary changes or updates. You should consult competent legal counsel if you have any questions. In particular, if you use an outside applicant screening service, you will want to verify what specific criteria are used for denying applicants based upon prior criminal history, and avoid any across-the-board denials. In addition, your editors recommend adopting some sort of review process if your screening process recommends denial of an application solely due to prior criminal conduct. For example,

you would notify the applicant of the denial recommendation, and permit the applicant to provide any relevant mitigating information as listed in section 3 above. This information should be reviewed by an off-site manager (who has no knowledge of any personal characteristics of the applicant), who would then make the final determination on the applicant's Rental Application.

The HUD guidance is still largely untested, and it is not yet clear how this guidance will be interpreted by either courts, the Virginia Fair Office or HUD, so this is an area that your editors anticipate will continue to evolve.

Limited English Proficiency

This guidance is also based upon HUD's discriminatory effects regulations, and confirms that it may be a fair housing violation to have policies requiring English fluency in a leasing transaction, a so-called "English only" policy. The 3-prong discriminatory effects test is applied as follows:

1. Does the policy have a discriminatory effect on a protected class?
   Census data can be used to show a disparate impact on persons of multiple national origins.
2. Is the policy necessary to achieve a "substantial, legitimate, nondiscriminatory interest"?
   English proficiency is likely "not necessary" in the landlord-tenant context where communications are not particularly complex or frequent, and where management company may have multilingual staff.
3. Is there a less discriminatory alternative to achieve such interest?
   Examples cited that would be less discriminatory than an "English only" policy would be to allow a tenant extra time to review a lease, using translation services, or language skills of staff members or other persons (family members, etc.) who are present and can interpret.

It is therefore unlikely that an "English only" language requirement would survive a fair housing challenge under the above analysis.

Mitigation of Mold Liability

Mold related claims are serious and potentially catastrophic issues for landlords. Mold issues are so risky, and exposure to losses so great, that insurance companies are either not providing insurance, or the cost of coverage is typically so high as to make it economically infeasible to acquire mold coverage. Please note, however, that VRLTA Section 55-248.71 now authorizes a landlord to establish a self-insurance fund to cover claims for mold which would otherwise be covered by insurance. Your editors recommend you speak with an insurance professional about whether a self-insurance fund for mold and other coverages makes sense for your company.

Your editors defended a mold claim in Richmond where the landlord and manager were sued for $9 million. While the case was settled, the landlord and manager had to spend more than $100,000 in attorneys' fees and costs to get the case to the point where it could be settled.

The VRLTA provides some important safe harbors and procedures for the protection of landlords. It is clearly in every landlord's best interest to avail themselves of these safe harbors, as well as the prescribed procedures, in order to protect themselves to the maximum extent possible from potentially "bet the company" type losses which are not covered by insurance.

With regard to tenants, at the beginning of the tenancy, the move-in inspection report should include a provision as to whether or not there is visible evidence of mold. Your editors recommend that you pre-inspect units prior to the move-in inspection, to ensure that there is in fact no visible evidence of mold. The law provides the landlord a "safe harbor" if there is no visible evidence of mold listed on the move-in report given to the tenant, and the tenant does not discover any visible evidence of mold, or fails to report same within 5 days of move-in. In this case, the "mold immunity" legislation contained in Section 8.01-226.12 creates a rebuttable presumption that no mold existed in the dwelling unit at the time of the move-in. If mold is identified, the landlord is required to remediate the mold prior to allowing occupancy to the tenant, thereafter re-inspect the dwelling unit to confirm there is no visible mold, and follow the statutory process with the tenant described herein.

During the tenancy, Section 55-248.16 makes it clear that the tenant has a duty to use reasonable efforts to prevent the accumulation of water and the growth of mold, and to notify the landlord of any moisture accumulation or visible evidence of mold after commencement of the tenancy. A good move-in report showing no visible evidence of mold at the time of the move-in, coupled with this section, provides a solid basis for a landlord to take the position that there was no mold present at move in, and that any subsequent mold accumulation was at least partially due to the tenant's failure to prevent the accumulation of water and the growth of mold, or to timely notify the landlord of such conditions. A tenant who allows such a condition, or who fails to notify the landlord of such a condition, would likely be deemed to have been guilty of contributory negligence and would therefore be completely barred from any recovery from the landlord. Further, the doctrine of assumption of the risk may also be applicable, in that a tenant who knowingly allowed a moisture condition to exist, or allowed visible evidence of mold to exist, would likely be held to have assumed the risk and therefore would be barred from any recovery from the landlord. Finally, the failure of the tenant to prevent growth of mold or to promptly report a mold condition to the landlord would be a breach of a well-drafted lease under its terms, and a violation of the VRLTA.

In the event the tenant discovers mold issues and notifies the landlord, Section 55-248.13 makes it clear that the landlord must promptly respond to any mold issues raised by the tenant and must otherwise take reasonable steps to prevent the accumulation of moisture in and about the premises. Relocation of the tenant during mold remediation may also be required, and a definition of "mold remediation in accordance with professional standards" established a protocol for landlords to address mold conditions when they arise. However, the landlord is not liable for the costs of remediation if it is determined the accumulation of mold was the fault of the tenant and the landlord may obtain a money judgment against the tenant for the costs of remediation and the lost rent if a tenant is at fault for the mold.

Given the seriousness of mold issues and the lack of readily available insurance, it is critical that all landlords have a full and complete understanding of the law and how to "put a collar around the risk" of mold claims filed by tenants. In the event of any uncertainty, or if assistance is needed preparing forms, such as the move-in inspection report, please consult competent legal counsel.

Contact VAMA for more information.

Premises Liability

Premises liability involves an accident or injury which occurs to an individual while on property owned or maintained by someone else. Generally speaking, landlords and property managers have a duty to maintain the property in a safe condition. Typically, in order to be found legally responsible, the evidence would need to show that the landlord and/or manager caused a dangerous condition, or knew about the condition, and failed to take appropriate action in a reasonable period of time. If it is determined the landlord or manager was legally responsible for an injury to a person on the property, the landlord and/or manager may be liable to the injured person for damages.

Injuries for which landlords and/or managers have been held liable involve slip and fall, elevator malfunctions and third party criminal acts, including murder, physical and sexual assaults, where it was shown there was inadequate security or the property manager was negligent in hiring an employee with a criminal record. A landlord in Virginia was held liable for the third party criminal acts of a rapist who attacked a female tenant when the break-in point of entry was a defective sliding glass door with a settlement of more than $500,000.00. Landlords have also been found liable for accidents in parking lots, pools, poisoning, snow and ice removal and other accidents. There are many "premises liability" cases in Virginia and in other states against residential landlords and property managers, and commercial shopping center landlords. These cases typically relate to whether the landlord and/or manager had actual or constructive knowledge of a defect or unsafe condition, and whether the injury suffered by the plaintiff was foreseeable.

Section 55-248.13 of the VRLTA requires the landlord to provide and maintain a "fit premises." In doing so, the landlord must comply with all applicable building and housing codes affecting health and safety. Finally, Section 55-248.13 requires that landlords keep all common areas of a multifamily property "structurally safe." Localities are permitted to require dead bolt locks, peepholes, window locks, and manufacturer's locks and "Charlie bars" on sliding glass doors for landlords who rent five or more dwellings units in a building under Section 55-248.13.1.

At the same time, Section 55-248.13 of the VRLTA limits the liability of the landlord to only those cases where the tenant's actual damages are proximately caused by the landlord's failure to exercise ordinary care. This prevents the tenant from claiming the landlord is "strictly liable" for a maintenance issue. This section was interpreted by a 2012 Virginia Supreme Court case to limit the landlord's liability to a breach by the landlord of obligations under the lease or the statute, period. Professional property managers should be aware of this evolving case law and the VRLTA that protects landlords from general "tort" liability and should discuss this with their insurance professional.

It is important to remember also that a landlord can be held liable for premises liability damages even when a written notice has not been given to the landlord by the tenant. Section 55-248.6 codifies the common law in part and states that: "However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists."

Landlords can protect themselves at the time the tenant moves in with a proper move-in inspection report. If an alleged defect is not listed on the move-in inspection report, and the tenant does not object to the alleged defect or unsafe condition within five days, the tenant is deemed to have accepted the dwelling unit as being free from such alleged defect and unsafe conditions. The burden is then shifted to the tenant to notify the landlord of any defects or unsafe conditions of which he or she becomes aware. Given the tenant's duty to notify, even if it were determined a landlord should have known about an unsafe condition which caused an injury, arguably the tenant has committed contributory negligence if he or she fails to advise the landlord of a perceived safety defect. In addition, the failure to properly notify the landlord of a maintenance condition is a breach of the lease according to its terms (if the lease is drafted correctly) and a violation of the VRLTA, which could act as a complete bar to recovery in Virginia.

If a tenant complains or gives notice of an unsafe condition, the landlord should undertake a reasonable investigation of the tenant's complaint, take appropriate action under the circumstances, and in any event document the details of the investigation, what action was taken, if any, and the reasoning for the action or determination not to take action. In a case in Fairfax County, a woman notified the landlord about inadequate lighting in a courtyard. She complained the courtyard was too dark and unsafe, and unfortunately, she was murdered in the same courtyard thereafter. The court held that the landlord was liable to the estate and family of the deceased woman.

In most cases, at a minimum, landlords should undertake some investigation into tenant's complaints involving health and safety, such as having a building code official visit the premises to give an opinion. Regular premises liability audits to include audits of insurance coverages are also advisable for landlords to prevent injuries, as well as to show the landlord acted reasonably in preventing any foreseeable injuries to tenants in the event an injury does occur. Such a process could be vital in protecting the landlord against potentially catastrophic damages.

Please contact VAMA for more information.

Issues with Lead Based Paint

EPA Requirements

On April 22, 2008, the Environmental Protection Agency (EPA) issued the Lead-Based Paint Renovation, Repair and Painting Program Rule (RRP). The RRP targets contractors and owners or managers of housing and child occupied facilities. It requires the use of lead-safe practices and other actions aimed at protecting against lead-based paint hazards associated with renovation, repair and painting activities in residential houses, apartments and other child occupied facilities built before 1978.

Renovation contractors, maintenance workers in multi-family housing, painters and others performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, schools and other child-occupied facilities built before 1978, must be certified, and must follow specific work practices to prevent lead contamination. Child-occupied facilities are defined as residential, public or commercial buildings where children under age six are present on a regular basis. The RRP does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed

indoors, or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is specifically not considered to be a minor maintenance or repair. The RRP generally does not apply to homeowners performing renovation, repair, or painting work in their own home, housing for the elderly if no children are expected to reside on the premises, or zero-bedroom buildings. Also, the training, certification, and work practice requirements will not apply if a signed statement is obtained from the owner that it is the owner's residence, no child under the age of 6 or woman who is pregnant resides there, the housing is not a child-occupied facility, and the owner acknowledges the renovation firm will not be required to use the work practices contained in the RRP.

In addition to the certification and training requirements, contractors or property owners who renovate, repair, or prepare surfaces for painting falling under the RRP must, before beginning work, give notice of the work to be done, including providing tenants or occupants with a copy of EPA's lead hazard information pamphlet, "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools." The RRP sets forth specific guidelines for providing notice to various persons for different projects, such as work to housing, schools, and common areas of multi-family housing or child-occupied facilities. The EPA provides sample pre-renovation disclosure forms which may be used, and owners of rental properties must document compliance with notice requirements and retain records for three years. All parties falling under the EPA's regulations should retain records to demonstrate compliance that all workers have been trained in lead-safe work practices, and that all lead-safe work practices and notice requirements were followed on the job. EPA provides a sample recordkeeping checklist to help contractors comply with the renovation recordkeeping requirements.

Virginia Law

It is important to remember that the EPA's rules set minimum requirements and regulations, but that each state may implement more stringent requirements. In Virginia, Section 54.1-500.1 requires that the Board for Asbestos, Lead, Mold and Home Inspectors promulgate regulations necessary to establish procedures and requirements, consistent with the EPA's RRP, for the approval of accredited renovation training programs, licensing of individuals and firms to engage in renovation, and the establishment of standards for performing renovations.

Virginia law defines an "accredited renovation training program" as a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling. "Renovation" is defined as the modification for compensation, of any existing structure that results in the disturbance of painted surfaces. "Compensation" includes (1) payments made to contractors and subcontractors, (2) wages to employees of contractors, building owners, property management companies, child-occupied facilities operators and others, and (3) rent for housing constructed before 1978 or child occupied facilities in public or commercial building space.

Exempted from the Virginia statutes are persons who: (1) perform lead-based paint activities within residences which they own and reside; (2) perform renovations on (i) housing constructed after January 1, 1978, (ii) housing for the elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the structure, or (iii) a zero-bedroom building; or (3) perform renovations of owner-occupied housing constructed before 1978, if the person performing renovations obtains a statement signed by the owner providing that (i) no child under the age of six or pregnant woman resides in the structure, (ii) the residence is not a child-occupied facility, and (iii) the owner acknowledges that renovations may not include all of the lead-safe work practices contained in the EPA's RRP.

Please contact VAMA for more information.