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HOUSE BILL NO. 2659

Offered January 23, 2009

A BILL to amend and reenact §§ 55-248.4 and 55-248.5 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; exemptions.

 Patron—Fralin

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That 55-248.4 and 55-248.5 of the Code of Virginia are amended and reenacted as follows:****§ 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 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 rights and 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.

"Duplex" means a house or other structure that is divided into two dwelling units.

"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.

"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.

"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.

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

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

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

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

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

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

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

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

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

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

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

97 "Rental application" means the written application or similar document used by a landlord to
98 determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may
99 charge an application fee as provided in this chapter and may request a prospective tenant to provide
100 information that will enable the landlord to make such determination. The landlord may photocopy each
101 applicant's driver's license or other similar photo identification, containing either the applicant's social
102 security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
103 The landlord may require that each applicant provide a social security number issued by the U.S. Social
104 Security Administration or an individual taxpayer identification number issued by the U.S. Internal
105 Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in
106 the landlord's dwelling unit.

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

111 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
112 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
113 to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit
114 until the effective date of the rental agreement. Security deposit shall not include a commercial
115 insurance policy purchased by a landlord on behalf of a tenant to secure the performance by the tenant
116 of the terms and conditions of a rental agreement, generally known as damage insurance. Further,
117 security deposit shall not include a commercial insurance policy purchased by a landlord to provide
118 property and casualty insurance coverage for a tenant, generally known as renter's insurance.

119 "Single-family residence" means a structure, other than a multi-family residential structure,
120 maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or

thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit.

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

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

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

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

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

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

§ 55-248.5. Exemptions; exception to exemption.

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

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

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

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

4. Occupancy in a hotel, motel, vacation cottage, boardinghouse or similar lodging held out for transients, unless let continuously to one occupant for more than thirty days, including occupancy in a lodging subject to taxation as provided in § 58.1-3819;

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

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

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

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

9. Occupancy by a tenant who pays no rent; and

10. Occupancy in single-family residences where the owner(s) are natural persons or their estates who own in their own name no more than ten single-family residences subject to a rental agreement; or in the case of condominium units or single-family residences located in any city or in any county having either the urban county executive form or county manager plan of government, no more than four. *For the purposes of this subdivision, a duplex shall be deemed to be one single-family residence.*

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