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HOUSE BILL NO. 1734

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 55-243, 55-246.1, 55-248.4, 55-248.6:1, 55-248.7, 55-248.15:1, 55-248.15:2, 55-248.31, 55-248.32, 55-248.33, 55-248.34:1, 55-248.37, 55-248.38:1, and 55-248.38:2 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act.*

Patron—Loupassi

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-243, 55-246.1, 55-248.4, 55-248.6:1, 55-248.7, 55-248.15:1, 55-248.15:2, 55-248.31, 55-248.32, 55-248.33, 55-248.34:1, 55-248.37, 55-248.38:1, and 55-248.38:2 of the Code of Virginia are amended and reenacted as follows:

§ 55-243. How judgment of forfeiture prevented.

A. If any party having right or claim to such lands shall, at any time before the trial in such ejectment, pay or tender to the party entitled to such rent, or to his attorney in the cause, or pay into court, all the rent and arrears, along with any reasonable attorney fees and late charges contracted for in a written rental agreement, interest and costs, all further proceedings in the ejectment shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance. If the parties dispute the amount of rent and other charges owed, the court shall take evidence on the issue and make orders for the tender, payment or refund of any appropriate amounts.

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

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

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

§ 55-246.1. Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55-248.4, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or business trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city wherein the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, in any general district court where venue is proper under § 8.01-259, against any defendant ~~who fails to appear in person or by counsel and is in default~~ if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt,

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59 suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fieri facias
60 arising out of a landlord tenant relationship. *However, the activities of any such person in court shall be*
61 *limited by the provisions of § 16.1-88.03.*

62 **§ 55-248.4. Definitions.**

63 When used in this chapter, unless expressly stated otherwise:

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

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

70 "Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord *or managing*
71 *agent* for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not
72 exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party
73 performing background, credit, or other pre-occupancy checks on the applicant. However, where an
74 application is being made for a dwelling unit which is a public housing unit or other housing unit
75 subject to regulation by the Department of Housing and Urban Development, an application fee shall not
76 exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord
77 performing background, credit, or other pre-occupancy checks on the applicant.

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

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

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

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

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

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

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

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

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

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

99 "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such
100 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose
101 the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of
102 § 16.1-88.03. Landlord shall not, however, include a community land trust as defined in § 55-221.1.

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

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

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

118 "Notice" means notice given in writing by either regular mail or hand delivery, with the sender
119 retaining sufficient proof of having given such notice, which may be either a United States postal
120 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, 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 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. 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 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 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.

"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.

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

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

§ 55-248.7. Terms and conditions of rental agreement; copy for tenant; accounting of rental payments.

A. A landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for an accounting of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month. *Terminations of tenancies shall be governed by § 55-248.37 unless the rental agreement provides for a different notice period.*

E. If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of his approval.

F. A copy of any written rental agreement signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

H. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

§ 55-248.15:1. Security deposits.

A. A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money, plus any accrued interest thereon, held by the landlord as security as hereinafter provided may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the

payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § 55-248.16, less reasonable wear and tear; or (iii) to other damages or charges as provided in the rental agreement. The security deposit, any accrued interest and any deductions, damages and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due the tenant within 45 days after termination of the tenancy and delivery of possession.

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

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days thereafter, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter, (ii) a vacating notice to the tenant in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § 55-248.6.

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

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

B. The landlord shall:

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

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

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

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

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

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

§ 55-248.15:2. Schedule of interest rates on security deposits.

A. The interest rate established by § 55-248.15:1 varies annually with the annual rate being equal to four percentage points below the Federal Reserve Board discount rate as of January 1 of each year. The purpose of this section is to set out the interest rates applicable under this chapter.

B. The rates are as follows:

1. July 1, 1975, through December 31, 1979, 3.0%.
2. January 1, 1980, through December 31, 1981, 4.0%.
3. January 1, 1982, through December 31, 1984, 4.5%.
4. January 1, 1985, through December 31, 1994, 5.0%.
5. January 1, 1995, through December 31, 1995, 4.75%.
6. January 1, 1996, through December 31, 1996, 5.25%.
7. January 1, 1997, through December 31, 1998, 5.0%.
8. January 1, 1999, through June 30, 1999, 4.5%.
9. July 1, 1999, through December 31, 1999, 3.5%.
10. January 1, 2000, through December 31, 2000, 4.0%.
11. January 1, 2001, through December 31, 2001, 5.0%.
12. January 1, 2002, through December 31, 2002, 0.25%.
13. January 1, 2003, through December 31, 2003, 0%.
14. January 1, 2004, through December 31, 2004, 1.0%.
15. January 1, 2005, through December 31, 2005, 2.25%.
16. January 1, 2006, through December 31, 2006, 4.25%.
17. January 1, 2007, through December 31, 2007, 5.25%.
18. January 1, 2008, through December 31, 2008, 0.75%.
19. January 1, 2009, through December 31, 2009, 0.00%.
20. January 1, 2010, through December 31, 2010, 0.00%.
21. January 1, 2011, through December 31, 2011, 0.00%.
22. *January 1, 2012, through December 31, 2012, 0.00%.*
23. *January 1, 2013, through December 31, 2013, 0.00%.*

Thereafter, the interest rate shall be determined in accordance with subsection B of § 55-248.15:1.

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

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

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

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental

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

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

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

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

damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

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

§ 55-248.32. Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § 55-248.16 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item ~~or~~, cleaning, ~~or by a correction by the tenant of any other noncompliance with § 55-248.16~~, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so.

§ 55-248.33. Remedies for absence, nonuse, and abandonment.

If the rental agreement requires the tenant *fails* to give written notice to the landlord of an anticipated extended absence in excess of seven days ~~and the tenant fails to do so~~, the landlord may recover actual damages from the tenant.

During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises have been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § 55-248.6 requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be rebuttable presumption that the premises have been abandoned by the tenant and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § 55-248.35.

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

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

B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to § 55-248.38:2, the landlord may accept *all amounts owed to the landlord by the tenant*, including full payment of any money judgment, award of attorney fees and court costs, *and all*

subsequent rents that may be paid prior to eviction, and proceed with eviction provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees and court costs, *and all subsequent rents that may be paid prior to eviction.* If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant.

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

D. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

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

§ 55-248.37. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, *unless the rental agreement provides for a different notice period. If the rental agreement so provides, the landlord or the tenant may terminate a two-month or 60-day tenancy by serving a written notice on the other at least 30 days prior to the next rent due date. Notwithstanding any other provision of law, the landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § 55-248.35 shall control.*

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable ~~attorneys'~~ attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § 55-248.7 applies.

C. In the event of termination of a rental agreement and the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

§ 55-248.38:1. Disposal of property abandoned by tenants.

If any items of personal property are left in the *dwelling unit, the premises, or in any storage area* provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination

notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the *dwelling unit or the premises* would be disposed of within the ~~twenty-four hour~~ 24-hour period after termination, (ii) given written notice to the tenant in accordance with § 55-248.33, which includes a statement that any items of personal property left in the *dwelling unit or the premises* would be disposed of within the ~~twenty-four hour~~ 24-hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the *dwelling unit or the premises* would be disposed of within ~~twenty-four~~ 24 hours after expiration of a ~~ten-day~~ 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant shall have the right to remove his personal property from the *dwelling unit or the premises* at reasonable times during the ~~twenty-four hour~~ 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the ~~twenty-four hour~~ 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, *the premises, or from any storage area provided by the landlord* pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.