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HOUSE BILL NO. 273

House Amendments in [] — January 28, 2014

A *BILL to amend and reenact §§ 55-248.4, 55-248.5, 55-248.15:1, and 55-248.15:2 of the Code of Virginia and to repeal § 55-248.15:2 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; applicability; security deposits.*

Patron Prior to Engrossment—Delegate Loupassi

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.4, 55-248.5, 55-248.15:1, and 55-248.15:2 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 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

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59 Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the
60 American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard
61 Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration
62 and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial
63 hygienist consistent with said guidance documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

116 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
117 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
118 to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit
119 until the commencement date of the rental agreement. Security deposit shall not include a damage
120 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.

§ 55-248.5. Exemptions; exception to exemption; application of chapter to certain occupants.

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, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;

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)~~ *owners* are natural persons or their estates who own in their own name no more than ~~ten~~ *two* 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.~~

B. A guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar 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 agent thereof, 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 thereto, which would otherwise be required under this chapter. For purposes of this chapter, 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.

182 C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
183 boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days,
184 such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging
185 establishment shall give a five-day written notice of nonpayment to a person residing in such lodging
186 and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if
187 payment in full has not been received.

188 D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
189 boardinghouse, or similar transient lodging as their primary residence for more than 90 consecutive days
190 or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of
191 this chapter.

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

194 **§ 55-248.15:1. Security deposits.**

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

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

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

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

239 *Nothing this section shall be construed to prohibit the landlord from making the disposition of the*
240 *security deposit prior to the 45-day period and charging an administrative fee to the tenant for such*
241 *expedited processing, if the rental agreement so provides and the tenant requests expedited processing in*
242 *a separate written document.*

243 The landlord shall notify the tenant in writing of any deductions provided by this subsection to be

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

B. The landlord shall:

1. Accrue interest at an annual rate equal to four percentage points below the Federal Reserve Board discount rate as of January 1 of each year on all property or money held as a security deposit. However, no interest shall be due and payable unless the security deposit has been held by the landlord for a period exceeding 13 months beginning from the commencement date of the rental agreement or after the effective date of any prior written or oral rental agreements with the same tenant, for continuous occupancy of the same dwelling unit until termination of the tenancy and delivery of possession; such security deposit earning interest which begins accruing from the effective date of the rental agreement, and such interest shall be paid only upon termination of the tenancy, delivery of possession and return of the security deposit as provided in subsection A;

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

3. 2. 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%.

305 14. January 1, 2004, through December 31, 2004, 1.0%.
306 15. January 1, 2005, through December 31, 2005, 2.25%.
307 16. January 1, 2006, through December 31, 2006, 4.25%.
308 17. January 1, 2007, through December 31, 2007, 5.25%.
309 18. January 1, 2008, through December 31, 2008, 0.75%.
310 19. January 1, 2009, through December 31, 2009, 0.00%.
311 20. January 1, 2010, through December 31, 2010, 0.00%.
312 21. January 1, 2011, through December 31, 2011, 0.00%.
313 22. January 1, 2012, through December 31, 2012, 0.00%.
314 23. January 1, 2013, through December 31, 2013, 0.00%.
315 [24. January 1, 2014, through December 31, 2014, 0.00%.]
316 Thereafter, the interest rate shall be determined in accordance with subsection B of § 55-248.15:1.
317 2. That § 55-248.15:2 of the Code of Virginia is repealed.
318 3. That the provisions of the second enactment of this act shall become effective on January 1,
319 2015.
320 4. That on or after January 1, 2015, there shall be no interest due and payable on security
321 deposits of a tenant held under the Virginia Residential Landlord Tenant Act (§ 55-248.2 et seq.)
322 of the Code of Virginia (the Act). Any accrued interest due and payable as of December 31, 2014,
323 on security deposits of a tenant held under the Act shall be paid to such tenant no later than 45
324 days after termination of tenancy and delivery of possession as otherwise provided in § 55-248.15:1
325 of the Code of Virginia.