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**HOUSE BILL NO. 1333**

Offered January 8, 2020

Prefiled January 8, 2020

*A BILL to amend and reenact §§ 55.1-1204, 55.1-1206, and 55.1-1226 of the Code of Virginia, relating to landlord and tenant, damage insurance in lieu of security deposit.*

Patrons—Keam, Aird, Brewer, Price, Coyner, Hurst and Lindsey

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55.1-1204, 55.1-1206, and 55.1-1226 of the Code of Virginia are amended and reenacted as follows:**

**§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.**

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, the 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. The landlord shall offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. Such written rental agreement shall be effective upon the date signed by the parties.

C. If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The provision of this chapter shall be applicable to the dwelling unit that is being rented;

2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of § 55.1-1253;

3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit *in an amount, or require damage insurance coverage for an amount, or any combination thereof*, not to exceed ~~an~~ a total amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

D. Except as provided in the written rental agreement, or as provided in subsection C if no written agreement is offered, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Except as provided in the written rental agreement, 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 a written statement 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.

E. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

F. If the rental agreement contains any provision allowing the landlord to approve or disapprove a sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt 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 is evidence of his approval.

G. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The

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59 failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

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

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

65 **§ 55.1-1206. Landlord may obtain certain insurance for tenant.**

66 A. A landlord may require as a condition of tenancy that a tenant have commercial insurance  
67 coverage as specified in the rental agreement to secure the performance by the tenant of the terms and  
68 conditions of the rental agreement and pay for the cost of premiums for such insurance coverage  
69 obtained by the landlord, generally known as "damage insurance." As provided in § 55.1-1200, such  
70 payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55.1-1208,  
71 the landlord shall not require a tenant to pay both a security deposit and the cost of damage insurance  
72 premiums, if the total amount of any security deposit and damage insurance ~~premiums~~ coverage exceeds  
73 the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has  
74 the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to  
75 obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall  
76 maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains  
77 damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the  
78 tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance  
79 coverage and may recover administrative or other fees associated with administration of a damage  
80 insurance policy, including a tenant opting out of the insurance coverage provided by the landlord  
81 pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall  
82 provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or  
83 certificate evidencing the coverage being provided and upon request of the tenant make available a copy  
84 of the insurance policy.

85 B. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified  
86 in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property,  
87 and personal liability coverage insuring personal property located in dwelling units not occupied by the  
88 owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by  
89 the landlord, in order to provide such coverage for the tenant as part of rent or as otherwise provided in  
90 this section. As provided in § 55.1-1200, such payments shall not be deemed a security deposit but shall  
91 be rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate  
92 policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the  
93 tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at  
94 all times during the term of the rental agreement. If a tenant allows his renter's insurance policy required  
95 by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's  
96 insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for  
97 such insurance as rent or as otherwise provided herein until the tenant has provided written  
98 documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

99 C. If the landlord requires that such premiums be paid prior to the commencement of the tenancy,  
100 the total amount of all security deposits ~~and~~, insurance ~~premiums~~ coverage for damage insurance, and  
101 ~~insurance premiums~~ for renter's insurance shall not exceed the amount of two months' periodic rent.  
102 Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such  
103 insurance coverage.

104 D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy  
105 shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual  
106 costs of such insurance coverage and may recover administrative or other fees associated with the  
107 administration of a renter's insurance program, including a tenant opting out of the insurance coverage  
108 provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants,  
109 the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the  
110 insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon  
111 request of the tenant make available a copy of the insurance policy. Such summary or certificate shall  
112 include a statement regarding whether the insurance policy contains a waiver of subrogation provision.  
113 Any failure of the landlord to provide such summary or certificate, or to make available a copy of the  
114 insurance policy, shall not affect the validity of the rental agreement.

115 If the rental agreement does not require the tenant to obtain renter's insurance, the landlord shall  
116 provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the  
117 landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverage does  
118 not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he  
119 should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance  
120 obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal

Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System to obtain information regarding whether the property is located in a special flood hazard area. Any failure of the landlord to provide such notice shall not affect the validity of the rental agreement. If the tenant requests translation of the notice from the English language to another language, the landlord may assist the tenant in obtaining a translator or refer the tenant to an electronic translation service. In doing so, the landlord shall not be deemed to have breached any of his obligations under this chapter or otherwise become liable for any inaccuracies in the translation. The landlord shall not charge a fee for such assistance or referral.

E. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

**§ 55.1-1226. Security deposits.**

A. No landlord may 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 held by the landlord as security as provided in this section, may be applied by the landlord solely to (i) the payment of accrued rent, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with § 55.1-1227, less reasonable wear and tear; (iii) other damages or charges as provided in the rental agreement; or (iv) actual damages for breach of the rental agreement pursuant to § 55.1-1251. The security deposit 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 to the tenant, within 45 days after the termination date of the tenancy. As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to § 55.1-1251, in which case, the landlord shall give written notice of security deposit disposition within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to § 8.01-126.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period required by subsection A, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address 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 landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name; social security number, if known; and last known address of each tenant on the rental agreement. If the landlord or managing agent is a real estate licensee, compliance with this subsection shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

C. 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 required by subsection A. However, provided that 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, 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 written notice to the tenant confirming the vacating date 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

182 accordance with § 55.1-1202.

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

191 D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of  
192 the security deposit prior to the 45-day period required by subsection A and charging an administrative  
193 fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant  
194 requests expedited processing in a separate written document.

195 E. The landlord shall notify the tenant in writing of any deductions provided by this section to be  
196 made from the tenant's security deposit during the course of the tenancy. Such notification shall be made  
197 within 30 days of the date of the determination of the deduction and shall itemize the reasons in the  
198 same manner as provided in subsection F. No such notification shall be required for deductions made  
199 less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to  
200 comply with this section, the court shall order the return of the security deposit to the tenant, together  
201 with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which  
202 case the court shall order an amount equal to the security deposit credited against the rent due to the  
203 landlord. In the event that damages to the premises exceed the amount of the security deposit and  
204 require the services of a third-party contractor, the landlord shall give written notice to the tenant  
205 advising him of that fact within the 45-day period required by subsection A. If notice is given as  
206 prescribed in this subsection, the landlord shall have an additional 15-day period to provide an  
207 itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant  
208 from recovering other damages to which he may be entitled under this chapter. The holder of the  
209 landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the  
210 interest is acquired or transferred, is bound by this section and shall be required to return any security  
211 deposit received by the original landlord that is duly owed to the tenant, whether or not such security  
212 deposit is transferred with the landlord's interest by law or equity, regardless of any contractual  
213 agreements between the original landlord and his successors in interest.

214 F. The landlord shall:

215 1. Maintain and itemize records for each tenant of all deductions from security deposits provided for  
216 under this section that the landlord has made by reason of a tenant's noncompliance with § 55.1-1227, or  
217 for any other reason set out in this section, during the preceding two years; and

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

220 G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by  
221 the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the  
222 tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of  
223 determining the amount of security deposit to be returned. If the tenant desires to be present when the  
224 landlord makes the inspection, he shall, in writing, so advise the landlord, who in turn shall notify the  
225 tenant of the date and time of the inspection, which must be made within 72 hours of delivery of  
226 possession. Following the move-out inspection, the landlord shall provide the tenant with a written  
227 security deposit disposition statement, including an itemized list of damages. If additional damages are  
228 discovered by the landlord after the security deposit disposition has been made, nothing in this section  
229 shall be construed to preclude the landlord from recovery of such damages against the tenant, provided,  
230 however, that the tenant may present into evidence a copy of the move-out report to support the tenant's  
231 position that such additional damages did not exist at the time of the move-out inspection.

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

234 1. *The landlord shall permit a tenant to provide damage insurance coverage in lieu of the payment of*  
235 *a security deposit. Such damage insurance in lieu of a security deposit shall conform to the following*  
236 *criteria:*

237 1. *The insurance provider must be licensed by the Virginia State Corporation Commission;*

238 2. *The insurance must permit the payment of premiums on a monthly basis, unless the tenant selects*  
239 *a different payment schedule;*

240 3. *The coverage must be effective upon the payment of the first premium and remain effective for the*  
241 *entire lease term;*

242 4. *The coverage provided per claim must be no less than the amount the landlord requires for*  
243 *security deposits; and*

244       5. The insurance provider must agree to approve or deny payment of a claim within two business  
245 days or receiving notice of a claim.  
246       J. Each landlord may designate one or more rental damage insurance providers from which it will  
247 accept rental damage insurance in lieu of a security deposit. Such insurers shall be identified in the  
248 written lease agreement.