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**SENATE BILL NO. 707**

Offered January 8, 2020

Prefiled January 7, 2020

*A BILL to amend and reenact §§ 36-139, 55.1-1204, and 55.1-1244 of the Code of Virginia, relating to landlord and tenant; tenant rights and responsibilities; explanation and remedy for material noncompliance.*

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Patron—McClellan

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Referred to Committee on General Laws and Technology

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

**1. That §§ 36-139, 55.1-1204, and 55.1-1244 of the Code of Virginia are amended and reenacted as follows:**

**§ 36-139. Powers and duties of Director.**

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

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59 17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust  
60 Fund.

61 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing  
62 Trust Fund and to carry out the policies and procedures established by the Board.

63 19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing  
64 Trust Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are  
65 to be made from such fund; directing the Virginia Housing Development Authority and the Department  
66 as to the closing and disbursing of such loans and grants and as to the servicing and collection of such  
67 loans; directing the Department as to the regulation and monitoring of the ownership, occupancy and  
68 operation of the housing developments and residential housing financed or assisted by such loans and  
69 grants; and providing direction and guidance to the Virginia Housing Development Authority as to the  
70 investment of moneys in such fund.

71 20. Establishing and administering program guidelines for a statewide homeless intervention program.

72 21. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block  
73 Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and  
74 associated services to low-income households within the Commonwealth in accordance with applicable  
75 federal law and regulations.

76 22. Developing a strategy concerning the expansion of affordable, accessible housing for older  
77 Virginians and Virginians with disabilities, including supportive services.

78 23. Serving as the Executive Director of the Commission on Local Government as prescribed in  
79 § 15.2-2901 and perform all other duties of that position as prescribed by law.

80 24. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the  
81 creation and implementation of housing programs and community development for the purpose of  
82 meeting the housing needs of persons who have been released from federal, state, and local correctional  
83 facilities into communities.

84 25. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title  
85 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing  
86 Development Authority.

87 26. *Developing a statement of tenant rights and responsibilities explaining in plain language the*  
88 *rights and responsibilities of tenants under the Virginia Residential Landlord and Tenant Act*  
89 *(§ 55.1-1200 et seq.) and maintaining such statement on the Department's website. The statement of*  
90 *tenant rights and responsibilities shall include an explanation of (i) the landlord's responsibility to*  
91 *maintain the dwelling unit in a fit and habitable condition, (ii) the tenant's rights to request repairs and*  
92 *other corrective action by the landlord to ensure such condition, and (iii) the tenant's rights (a) to*  
93 *terminate the lease, (b) to be compensated for damages, (c) to withhold or defer rent, and (d) to make*  
94 *an assertion of material noncompliance before a court. The Director shall also develop and maintain on*  
95 *the Department's website a form to be signed by the parties to a written rental agreement*  
96 *acknowledging that the tenant has received from the landlord the statement of tenant rights and*  
97 *responsibilities. The Director may at any time amend the statement of tenant rights and responsibilities*  
98 *and the form for signatures by the parties as the Director deems necessary and appropriate. The*  
99 *statement of tenant rights and responsibilities shall contain the plain language explanation of the rights*  
100 *and responsibilities of tenants in at least 14-point type.*

101 27. Carrying out such other duties as may be necessary and convenient to the exercise of powers  
102 granted to the Department.

103 **§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental**  
104 **agreement for tenant.**

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

109 B. ~~The~~ A landlord shall offer ~~the~~ a prospective tenant a written rental agreement containing the terms  
110 governing the rental of the dwelling unit and setting forth the terms and conditions of the ~~landlord~~  
111 ~~tenant~~ landlord-tenant relationship. ~~Such~~ and shall provide with it the statement of tenant rights and  
112 responsibilities developed by the Department of Housing and Community Development and posted on its  
113 website pursuant to § 36-139. The parties to a written rental agreement shall sign the form developed by  
114 the Department of Housing and Community Development and posted on its website pursuant to § 36-139  
115 acknowledging that the tenant has received from the landlord the statement of tenant rights and  
116 responsibilities. The written rental agreement shall be effective upon the date signed by the parties.

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

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

120 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 not to exceed an 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 *and the statement of tenant rights and responsibilities with both* signed by both the tenant and the landlord 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 *and statement* shall not affect the validity of the agreement.

H. 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.

I. 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.

**§ 55.1-1244. Tenant's assertion; rent escrow.**

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water, except where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (iv) the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court in which the premises is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D. *If the landlord fails to provide the statement of tenant rights and responsibilities form required by subsection B of § 55.1-1204 or a copy of the signed form required by subsection G of § 55.1-1204, there shall be a rebuttable presumption that the landlord did not maintain the dwelling unit in a fit and habitable condition. Any rent due after the tenant files such assertion shall be paid into the appropriate court.*

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

~~1. Prior~~ prior to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a

182 rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord  
183 is unreasonable; and

184 2. ~~The tenant has paid into court the amount of rent called for under the rental agreement, within~~  
185 ~~five days of the date due under the rental agreement, unless or until such amount is modified by~~  
186 ~~subsequent order of the court under this chapter.~~

187 C. It shall be sufficient answer or rejoinder to an assertion made pursuant to subsection A if the  
188 landlord establishes to the satisfaction of the court that (i) the conditions alleged by the tenant do not in  
189 fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused  
190 by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such  
191 family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the  
192 purpose of correcting such conditions.

193 D. Any court shall make findings of fact on the issues before it and shall issue any order that may  
194 be required. Such an order may include any one or more of the following:

195 1. Terminating the rental agreement upon the request of the tenant or ordering the surrender of the  
196 premises to the landlord if the landlord prevails on a request for possession pursuant to an unlawful  
197 detainer properly filed with the court;

198 2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in  
199 accordance with this chapter;

200 3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

201 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be  
202 abated as determined by the court in such an amount as may be equitable to represent the existence of  
203 any condition found by the court to exist. In all cases where the court deems that the tenant is entitled  
204 to relief under this chapter, the burden shall be upon the landlord to show cause why there should not  
205 be an abatement of rent;

206 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord  
207 refuses to make repairs after a reasonable time or to the landlord or to a *qualified* contractor chosen by  
208 the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall  
209 in its order ~~insure~~ ensure that moneys thus disbursed will be in fact used for the purpose of making  
210 repairs or effecting a remedy;

211 6. Referring any matter before the court to the proper state or local agency for investigation and  
212 report and granting a continuance of the action or complaint pending receipt of such investigation and  
213 report. ~~When such a continuance is granted, the tenant shall deposit with the court, within five days of~~  
214 ~~date due under the rental agreement, subject to any abatement under this section, rents that become due~~  
215 ~~during the period of the continuance, to be held by the court pending its further order;~~

216 7. Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;  
217 or

218 8. Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a  
219 mechanic's or materialman's lien.

220 E. Notwithstanding any provision of subsection D, where an escrow account is established by the  
221 court and the condition is not fully remedied within six months of the establishment of such account,  
222 and the landlord has not made reasonable attempts to remedy the condition, the court shall award all  
223 moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall  
224 begin upon a new six-month period with the same result if, at the end of the period, the condition has  
225 not been remedied.

226 F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15  
227 calendar days from the date of service of process on the landlord as authorized by § 55.1-1216, except  
228 that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the  
229 premises, such as failure of heat in winter, lack of adequate sewage disposal facilities, or any other  
230 condition that constitutes an immediate threat to the health or safety of the inhabitants of the leased  
231 premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to  
232 the initial proceeding in order to further determine the rights and obligations of the parties. Distribution  
233 of escrow moneys may only occur by order of the court after a hearing of which both parties are given  
234 notice as required by law or upon motion of both the landlord and tenant or upon certification by the  
235 appropriate inspector that the work required by the court to be done has been satisfactorily completed. If  
236 the tenant proceeds under this subsection, he may not proceed under any other section of this article as  
237 to that breach.

238 G. In cases where the court deems that the tenant is entitled to relief under this section and enters  
239 judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs  
240 of the tenant, including court costs, and reasonable attorney fees.