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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.*

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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.

121 However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has
122 received a verbal notice of it, or from all of the facts and circumstances known to him at the time in
123 question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to
124 another by taking steps reasonably calculated to inform another person whether or not the other person
125 actually comes to know of it. If notice is given that is not in writing, the person giving the notice has
126 the burden of proof to show that the notice was given to the recipient of the notice.

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

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

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

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

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

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

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

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

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

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

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

165 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
166 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
167 to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit
168 until the commencement date of the rental agreement. Security deposit shall not include a damage
169 insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 purchased by a
170 landlord to provide coverage for a tenant.

171 "Single-family residence" means a structure, other than a multi-family residential structure,
172 maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or
173 thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or
174 service with any other dwelling unit.

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

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

181 "Tenant records" means all information, including financial, maintenance, and other records about a

182 tenant or prospective tenant, whether such information is in written or electronic form or other medium.

183 "Utility" means electricity, natural gas, water and sewer provided by a public service corporation or
 184 such other person providing utility services as permitted under § 56-1.2. If the rental agreement so
 185 provides, a landlord may use submetering equipment or energy allocation equipment as defined in
 186 § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

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

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

196 **§ 55-248.6:1. Application deposit and application fee.**

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

207 **§ 55-248.7. Terms and conditions of rental agreement; copy for tenant; accounting of rental**
 208 **payments.**

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

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

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

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

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

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

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

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

238 **§ 55-248.15:1. Security deposits.**

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

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

249 *Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in*
 250 *writing by each of the tenants, disposition of the security deposit shall be joint and several, with one*
 251 *check being payable to all such tenants and sent to the forwarding address provided by one of the*
 252 *tenants. If no forwarding address is provided to the landlord to enable the landlord to make a refund of*
 253 *the security deposit, upon the expiration of one year from the date of the end of the 45-day time period,*
 254 *the balance of such security deposit shall escheat to the Commonwealth and shall be paid into the state*
 255 *treasury and credited to the Virginia Housing Partnership Revolving Fund established pursuant to*
 256 *§ 36-142. Upon payment to the Commonwealth, the landlord shall have no further liability to any tenant*
 257 *relative to the security deposit. If the landlord or managing agent is a real estate licensee, compliance*
 258 *with this paragraph shall be deemed compliance with § 54.1-2108 and corresponding regulations of the*
 259 *Real Estate Board.*

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

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

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

301 B. The landlord shall:

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

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

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

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

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

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

326 **§ 55-248.15:2. Schedule of interest rates on security deposits.**

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

330 B. The rates are as follows:

- 331 1. July 1, 1975, through December 31, 1979, 3.0%.
- 332 2. January 1, 1980, through December 31, 1981, 4.0%.
- 333 3. January 1, 1982, through December 31, 1984, 4.5%.
- 334 4. January 1, 1985, through December 31, 1994, 5.0%.
- 335 5. January 1, 1995, through December 31, 1995, 4.75%.
- 336 6. January 1, 1996, through December 31, 1996, 5.25%.
- 337 7. January 1, 1997, through December 31, 1998, 5.0%.
- 338 8. January 1, 1999, through June 30, 1999, 4.5%.
- 339 9. July 1, 1999, through December 31, 1999, 3.5%.
- 340 10. January 1, 2000, through December 31, 2000, 4.0%.
- 341 11. January 1, 2001, through December 31, 2001, 5.0%.
- 342 12. January 1, 2002, through December 31, 2002, 0.25%.
- 343 13. January 1, 2003, through December 31, 2003, 0%.
- 344 14. January 1, 2004, through December 31, 2004, 1.0%.
- 345 15. January 1, 2005, through December 31, 2005, 2.25%.
- 346 16. January 1, 2006, through December 31, 2006, 4.25%.
- 347 17. January 1, 2007, through December 31, 2007, 5.25%.
- 348 18. January 1, 2008, through December 31, 2008, 0.75%.
- 349 19. January 1, 2009, through December 31, 2009, 0.00%.
- 350 20. January 1, 2010, through December 31, 2010, 0.00%.
- 351 21. January 1, 2011, through December 31, 2011, 0.00%.
- 352 22. *January 1, 2012, through December 31, 2012, 0.00%.*
- 353 23. *January 1, 2013, through December 31, 2013, 0.00%.*

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

355 **§ 55-248.31. Noncompliance with rental agreement; monetary penalty.**

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

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

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

367 agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding
 368 anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations
 369 under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not
 370 remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement
 371 immediately and proceed to obtain possession of the premises. For purposes of this subsection, any
 372 illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act
 373 (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees,
 374 shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate
 375 the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out
 376 of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
 377 terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a
 378 criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence.
 379 However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or
 380 invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the
 381 presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action
 382 for immediate possession of the premises shall be held within 15 calendar days from the date of service
 383 on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged
 384 to exist upon the premises which constitute an immediate threat to the health or safety of the other
 385 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested
 386 trial, the court, to the extent practicable, shall order that the matter be given priority on the court's
 387 docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of
 388 service on the tenant. During the interim period between the date of the initial hearing and the date of
 389 any subsequent hearing or contested trial, the court may afford any further remedy or relief as is
 390 necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing
 391 on the premises. Failure by the court to hold either of the hearings within the time limits set out herein
 392 shall not be a basis for dismissal of the case.

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

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

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

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

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

441 **§ 55-248.32. Remedy by repair, etc.; emergencies.**

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

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

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

454 **§ 55-248.33. Remedies for absence, nonuse, and abandonment.**

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

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

471 **§ 55-248.34:1. Landlord's acceptance of rent with reservation.**

472 A. Provided the landlord has given written notice to the tenant that the rent will be accepted with
 473 reservation, the landlord may accept full or partial payment of all rent and receive an order of
 474 possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under
 475 Chapter 13 (§ 8.01-374 et seq.) of Title 8.01 and proceed with eviction under § 55-248.38:2. Such notice
 476 shall be included in a written termination notice given by the landlord to the tenant in accordance with
 477 § 55-248.31 or in a separate written notice given by the landlord to the tenant within five business days
 478 of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance
 479 with § 55-248.31, the landlord shall continue to give a separate written notice to the tenant within five
 480 business days of receipt of the rent that the landlord continues to accept the rent with reservation in
 481 accordance with this section until such time as the violation alleged in the termination notice has been
 482 remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is
 483 a public housing unit or other housing unit subject to regulation by the Department of Housing and
 484 Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this
 485 subsection if the landlord gives the tenant the written notice required herein for the portion of the rent
 486 paid by the tenant.

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

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

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

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

512 E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all
 513 (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges
 514 and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental
 515 agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law,
 516 and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall
 517 be dismissed. A tenant may invoke the rights granted in this section no more than one time during any
 518 12-month period of continuous residency in the dwelling unit, *regardless of the term of the rental*
 519 *agreement or any renewal term thereof*.

520 **§ 55-248.37. Periodic tenancy; holdover remedies.**

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

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

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

546 **§ 55-248.38:1. Disposal of property abandoned by tenants.**

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

551 notice to the tenant in accordance with this chapter, which includes a statement that any items of
552 personal property left in the *dwelling unit or the premises* would be disposed of within the ~~twenty-four~~
553 ~~hour~~ 24-hour period after termination, (ii) given written notice to the tenant in accordance with §
554 55-248.33, which includes a statement that any items of personal property left in the *dwelling unit or*
555 *the premises* would be disposed of within the ~~twenty-four hour~~ 24-hour period after expiration of the
556 seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement
557 that any items of personal property left in the *dwelling unit or the premises* would be disposed of within
558 ~~twenty-four~~ 24 hours after expiration of a ~~ten-day~~ 10-day period from the date such notice was given to
559 the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant
560 shall have the right to remove his personal property from the *dwelling unit or the premises* at reasonable
561 times during the ~~twenty-four hour~~ 24-hour period after termination or at such other reasonable times
562 until the landlord has disposed of the remaining personal property of the tenant.

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

574 **§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential**
575 **premises; recovery of possession by owner; disposition or sale.**

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

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

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

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