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HOUSE BILL NO. 1207

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact §§ 36-139, 55.1-1200, and 55.1-1203 of the Code of Virginia, relating to Department of Housing and Community Development; Virginia Residential Landlord and Tenant Act; affordable housing; criminal record screening model policy.

Patrons—Hayes and Shin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-139, 55.1-1200, and 55.1-1203 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.

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. *Developing and maintaining on the Department's website a criminal record screening model*
85 *policy for admitting or denying an applicant for affordable housing covered under the Virginia*
86 *Residential Landlord and Tenant Act (§ 55.1-1200 et seq.) in accordance with the U.S. Department of*
87 *Housing and Urban Development's guidance on the application of the Fair Housing Act (42 U.S.C.*
88 *§ 3601 et seq.) to the use of criminal records.*

89 26. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title
90 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing
91 Development Authority.

92 ~~26.~~ 27. Developing a statement of tenant rights and responsibilities explaining in plain language the
93 rights and responsibilities of tenants under the Virginia Residential Landlord and Tenant Act
94 (§ 55.1-1200 et seq.) and maintaining such statement on the Department's website. The Director shall
95 also develop and maintain on the Department's website a printable form to be signed by the parties to a
96 written rental agreement acknowledging that the tenant has received from the landlord the statement of
97 tenant rights and responsibilities as required by § 55.1-1204. The Director may at any time amend the
98 statement of tenant rights and responsibilities and such printable form as the Director deems necessary
99 and appropriate. The statement of tenant rights and responsibilities shall contain a plain language
100 explanation of the rights and responsibilities of tenants in at least 14-point type. The statement shall
101 provide the telephone number and website address for the statewide legal aid organization and direct
102 tenants with questions about their rights and responsibilities to contact such organization.

103 ~~27.~~ 28. Developing a statement of tenant rights and responsibilities explaining in plain language the
104 rights and responsibilities of tenants under the Virginia Manufactured Home Lot Rental Act (§ 55.1-1300
105 et seq.) and maintaining such statement on the Department's website. The Director shall also develop
106 and maintain on the Department's website a printable form to be signed by the parties to a written rental
107 agreement acknowledging that the tenant has received from the landlord the statement of tenant rights
108 and responsibilities as required by § 55.1-1303. The Director may at any time amend the statement of
109 tenant rights and responsibilities and such printable form as the Director deems necessary and
110 appropriate. The statement of tenant rights and responsibilities shall contain a plain language explanation
111 of the rights and responsibilities in at least 14-point type. The statement shall provide the telephone
112 number and website address for the statewide legal aid organization and direct tenants with questions
113 about their rights and responsibilities to contact such organization.

114 ~~28.~~ 29. Developing a sample termination notice that includes language referencing acceptance of rent
115 with reservation by a landlord following a breach of a lease by a tenant in accordance with § 55.1-1250.
116 The sample termination notice shall be in at least 14-point type and shall be maintained on the
117 Department's website.

118 ~~29.~~ 30. Developing and operating a Virginia Residential Sites and Structures Locator database to
119 assist localities in marketing any structures and parcels determined by the locality to be suitable for
120 future residential or mixed-use development or redevelopment and that are under (i) public ownership,

(ii) public and private ownership, or (iii) private ownership if the owner or owners have authorized the locality to market the structure or parcel for future residential or mixed-use development or redevelopment purposes.

~~30.~~ 31. Conducting a comprehensive statewide housing needs assessment at least every five years, which shall include (i) a review of housing cost burden and instability, supply and demand for affordable rental housing, and supply and demand for affordable for-sale housing and (ii) regional or local profiles that focus on specific housing needs of particular regions or localities.

~~31.~~ 32. Developing a statewide housing plan that reflects the findings of the statewide housing needs assessment conducted pursuant to subdivision ~~30~~ 31, which plan shall include measurable goals and be updated at least every five years to reflect changes in the Commonwealth's housing goals, and providing an annual report to the General Assembly on progress toward meeting the goals identified in such plan and the availability of housing that is accessible to people with disabilities.

~~32.~~ 33. Collecting reports submitted by localities pursuant to § 36-139.9 in any manner prescribed by the Department, including any forms developed by the Department to collect the information required to be reported by the localities pursuant to such section and publishing such reports on its website.

~~33.~~ 34. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

§ 55.1-1200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Action" means any recoupment, counterclaim, setoff, or other civil action and any other proceeding in which rights are determined, including actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Adverse action" means to evict, fail or refuse to enter into a rental agreement, fail or refuse to renew a rental agreement, or fail or refuse to add an individual to an existing rental agreement, or to make a negative change to the terms and conditions of the rental agreement, including by increasing the amount of the security deposit or rent.

"Affordable housing unit" means any residential building or dwelling unit that has received federal, state, or local funding, tax credits, or other subsidies connected in whole or in part to the restriction of rent, subsidization of ownership, or the development, rehabilitation, or other provision of rental housing for extremely low-income, very low-income, low-income, or moderate-income households, as those terms are defined by the U.S. Department of Housing and Urban Development.

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

"Application fee" means any nonrefundable fee that is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit.

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

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

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

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

"Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of tenants, corporate members who are not tenants, and any other category of persons specified in the bylaws of the organization and that:

1. Is not sponsored by a for-profit organization;
2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and

4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-income and moderate-income families in perpetuity.

"Damage insurance" means a bond or commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement

182 and to replace all or part of a security deposit.

183 "Dwelling unit" means a structure or part of a structure that is used as a home or residence by one
184 or more persons who maintain a household, including a manufactured home, as defined in § 55.1-1300.

185 "Effective date of rental agreement" means the date on which the rental agreement is signed by the
186 landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

187 "Essential service" includes heat, running water, hot water, electricity, and gas.

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

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

191 "Guest or invitee" means a person, other than the tenant or an authorized occupant, who has the
192 permission of the tenant to visit but not to occupy the premises.

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

195 "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such
196 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose
197 the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of
198 § 16.1-88.03. "Landlord" does not include a community land trust.

199 "Managing agent" means the person authorized by the landlord to act as the property manager on
200 behalf of the landlord pursuant to the written property management agreement.

201 "Mold remediation in accordance with professional standards" means mold remediation of that
202 portion of the dwelling unit or premises affected by mold, or any personal property of the tenant
203 affected by mold, performed consistent with guidance documents published by the U.S. Environmental
204 Protection Agency, the U.S. Department of Housing and Urban Development, or the American
205 Conference of Governmental Industrial Hygienists (Bioaerosols: Assessment and Control); Standard and
206 Reference Guides of the Institute of Inspection, Cleaning and Restoration Certification (IICRC) for
207 Professional Water Damage Restoration and Professional Mold Remediation; or any protocol for mold
208 remediation prepared by an industrial hygienist consistent with such guidance documents.

209 "Multifamily dwelling unit" means more than one single-family dwelling unit located in a building.
210 However, nothing in this definition shall be construed to apply to any nonresidential space in such
211 building.

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

217 "Notice" means notice given in writing by either regular mail or hand delivery, with the sender
218 retaining sufficient proof of having given such notice in the form of a certificate of service confirming
219 such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he
220 has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and
221 circumstances known to him at the time in question, he has reason to know it exists. A person "notifies"
222 or "gives" a notice or notification to another by taking steps reasonably calculated to inform another
223 person, whether or not the other person actually comes to know of it. If notice is given that is not in
224 writing, the person giving the notice has the burden of proof to show that the notice was given to the
225 recipient of the notice.

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

229 "Owner" means one or more persons or entities, jointly or severally, including a mortgagee in
230 possession, in whom is vested:

- 231 1. All or part of the legal title to the property; or
- 232 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

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

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

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

242 "Readily accessible" means areas within the interior of the dwelling unit available for observation at
243 the time of the move-in inspection that do not require removal of materials, personal property,

equipment, or similar items.

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

"Rental agreement" or "lease agreement" means all rental agreements, written or oral, and valid rules and regulations adopted under § 55.1-1228 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit.

"Renter's insurance" means insurance coverage specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in dwelling units not occupied by the owner.

"Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant for a dwelling unit.

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

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. "Security deposit" does not include a damage insurance policy or renter's insurance policy, as those terms are defined in § 55.1-1206, purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multifamily residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or essential service with any other dwelling unit.

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

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

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or any other medium.

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2 or a ratio utility billing system as defined in § 55.1-1212.

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

"Written notice" means notice given in accordance with § 55.1-1202, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) is affixed.

§ 55.1-1203. Application; deposit, fee, and additional information.

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

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's

305 driver's license or other similar photo identification, containing either the applicant's social security
306 number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
307 However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a
308 violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each
309 applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a
310 social security number issued by the U.S. Social Security Administration or an individual taxpayer
311 identification number issued by the U.S. Internal Revenue Service.

312 C. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by
313 the landlord to a third party performing background, credit, or other pre-occupancy checks on the
314 applicant. However, where an application is being made for a dwelling unit that is a public housing unit
315 or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development,
316 an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third
317 party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

318 D. A landlord shall consider evidence of an applicant's status as a victim of family abuse, as defined
319 in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In
320 order to establish the applicant's status as a victim of family abuse, an applicant may submit to the
321 landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the
322 U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a
323 law-enforcement incident report; or (iii) a court order. ~~If a landlord does not comply with this section,~~
324 ~~the applicant may recover actual damages, including all amounts paid to the landlord as an application~~
325 ~~fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were~~
326 ~~charged to the prospective tenant, along with attorney fees.~~

327 *E. No landlord of an affordable housing unit shall inquire about or require disclosure of, or if such*
328 *information is received, base an adverse action, in whole or in part, on an applicant's criminal or arrest*
329 *record unless the landlord does so in accordance with the criminal record screening model policy*
330 *developed by the Department of Housing and Community Development and posted on its website*
331 *pursuant to § 36-139 and provides the applicant with a written copy of such policy.*

332 *F. If a landlord fails to comply with the requirements of this section, the applicant may recover*
333 *actual damages, including all amounts paid to the landlord as an application fee, application deposit, or*
334 *reimbursement for any of the landlord's out-of-pocket expenses that were charged to the applicant, and*
335 *reasonable costs of the applicant, including court costs and attorney fees.*

336 **2. That the Department of Housing and Community Development (the Department) shall convene**
337 **a stakeholder group consisting of representatives from Housing Opportunities Made Equal of**
338 **Virginia, Legal Aid Justice Center, the Virginia Housing Alliance, Virginia First Cities Coalition,**
339 **the Virginia Municipal League, and Virginia Poverty Law Center, and other relevant parties as**
340 **identified by the Department, for the purpose of providing input into the development of the**
341 **criminal record screening model policy to be developed by the Director of the Department for**
342 **posting on its website pursuant to § 36-139 of the Code of Virginia, as amended by this act, for**
343 **admitting or denying an applicant for affordable housing covered under the Virginia Residential**
344 **Landlord and Tenant Act (§ 55.1-1200 et seq. of the Code of Virginia) in accordance with the U.S.**
345 **Department of Housing and Urban Development's guidance on the application of the Fair Housing**
346 **Act (42 U.S.C. § 3601 et seq.) to the use of criminal records.**