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 **YOU AND THE LAW**

*Navigating Bankruptcy &
Evictions During
the COVID-19 Pandemic*

November 4, 2021



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Roanoke Higher Education Center

PROGRAM

- 5:30 pm **Check In**—Lobby
- 6:00 pm **Welcome** – David Biedler, Esq., You and the Law Committee
Introductions – Lori Thompson, Esq., You and the Law Committee
- 6:10 pm Bankruptcy Program will be presented by the Honorable Paul Black and Andrew Goldstein, Esq., Bankruptcy Trustee. This session will provide an overview of how bankruptcy courts operate and key rules and procedures that govern how bankruptcy cases are conducted. Attendees will gain a better understanding of the fundamental differences between Chapters 7, 11 and 13, and the role of attorneys and trustees in bankruptcy proceedings.
- 6:50 pm Break
- 7:00 pm Landlord – Tenant presentation will be made by Grimes Creasy, Esq. and David Beidler, Esq. This session will focus on basic landlord-tenant law related to residential evictions in Virginia, including recent changes of state and federal law affecting evictions. This session will finish with an overview of Virginia’s Rent Relief Program.
- 7:40 pm **Questions**
- 8:00 pm **Adjournment**

UPDATE ON SUMMONS FOR UNLAWFUL DETAINER ACTIONS

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The following is an update on the current status of unlawful detainer actions and the execution of writs of eviction in Virginia as governed under both federal and state laws. This outline will also address several amendments to the Virginia Residential Landlord and Tenant Act (“VRLTA”), which were recently enacted during the current pandemic and following the close of the 2020 and 2021 General Assembly sessions.

I. CARES ACT

In response to the economic issues created by the COVID-19 pandemic, Congress enacted the Coronavirus Aid Relief and Economic Security Act (“CARES Act”) on March 27, 2020. The CARES Act placed a 120 day moratorium on the following: (i) the filing of unlawful detainer actions seeking possession of the leased premises due to nonpayment of rent or for other fees and charges; (ii) the charging of late fees, penalties or other charges to the resident related to nonpayment of rent; and (iii) the issuing of a 30 day notice to vacate until after the expiration of the 120 day moratorium period. The aforesaid 120 day moratorium period began on March 27, 2020 and expired on July 25, 2020. The CARES Act applied to any property that has a federally backed mortgage loan (*e.g.*, Freddie Mac or Fannie Mae) or that received federal funding from a HUD backed multifamily housing program such as, for example, project based Section 8, Section 202, Rural Rental Housing, or Housing Choice Vouchers.

Consequently, if any such covered property filed an unlawful detainer action seeking possession of the leased premises due to nonpayment of rent during the 120 day moratorium period, the UD case had to be dismissed without prejudice, with leave to refile after July 25th. Please note, however, that once the 120 day moratorium period expired, the plaintiff could file for nonpayment of the periodic rent that was outstanding, but the plaintiff could not recover any late fees or any NSF charges or any other such fees or charges related to nonpayment of rent that accrued during the months of April, May, June and July (the 120 day moratorium period). Further, any covered property was not permitted to issue a notice to vacate until after July 25th.

On July 15, 2020, in response to a request submitted by several members of the Virginia House of Delegates for an official advisory opinion, the Virginia Attorney General’s Office issued a letter opinion regarding the various legal mechanisms that can bar evictions in Virginia during the COVID-19 pandemic. In the AG’s opinion letter, the AG discussed at length the CARES Act and House Bill 340, which is now cited as

Virginia Code §44-209. To begin, the AG identified in detail the various properties that are covered under the CARES Act.

The AG then opined that “[t]he [120 day] federal eviction moratorium does not suspend actions that were filed before the moratorium took effect, nor does it prohibit actions that are based on reasons other than nonpayment of rent or other fees or charges.” Therefore, any unlawful detainer actions filed before March 27, 2020 would not be covered by the 120 day moratorium period nor would any unlawful detainer action based on a breach unrelated to nonpayment of rent be affected, regardless of when it was filed.

The AG further opined that a covered property must afford a resident with a 30 day notice to vacate prior to filing an unlawful detainer action based on nonpayment of rent. This means that the very earliest a covered property could have filed an unlawful detainer action seeking possession based on nonpayment of rent was August 26, 2020, provided that the 30 day notice to vacate was given immediately after the 120 day moratorium period expired on July 25th.

The AG also stated that the 30 day notice to vacate should include language relative to the amount of the outstanding balance due, the need for the resident to bring the outstanding balance current, and should the resident fail to do so timely, the landlord will file an action seeking a money judgment and possession once the 30 day notice period expires. Although at that time it appeared that the required 30 day notice to vacate only had to be given once covering any nonpayment of rent that accrued during the 120 day moratorium period set forth under the CARES Act, HUD has recently opined that the 30 day notice requirement is still in effect relative to CARES Act covered properties.

In determining whether the plaintiff is a covered property, the courts were and are being afforded discretion as to what it will accept to establish whether or not the plaintiff is in fact a covered property. Some courts require affidavits and/or the production of the underlying financing documents and/or testimony as to the type of tenancy at issue in the underlying case, i.e. a housing choice voucher holder, a Section 8 tenancy or a Low Income Housing Tax Credit (“LIHTC”) property. Other courts simply accept counsel’s representation as to the landlord’s status.

Lastly, although the 120-day eviction moratorium in §4024(b) of the CARES Act expired on July 25, 2020, some attorneys have been contending that portions of the CARES Act still remain applicable to evictions. In particular, §4024(c) requires “covered dwellings” (those properties that participate in a federal subsidy program or have a federally-backed mortgage) to provide a 30 day notice to vacate after expiration of the 120 day moratorium period prior to filing for an eviction, but unlike other sections of the CARES Act, §4024(c) does not have a provision within the Act that specifies a certain date on which the 30 day notice requirement per §4024(c) will terminate. As mentioned previously herein, on April 26, 2021, in response to an FAQ, the HUD Office of Multifamily Housing Programs stated that, notwithstanding the expiration of the CARES Act 120-day eviction moratorium, the CARES Act 30-day notice to vacate

requirement for **nonpayment of rent**, in Section 4024(c)(1), is still in effect for all CARES Act covered properties.

Further, the Federal Housing Finance Agency (“FHFA”) recently announced that the Fannie Mae and Freddie Mac multifamily forbearance program, which was due to expire on Sept. 30, 2021, has now been extended, and there is no announced termination date for the program at this time. Therefore, multifamily property owners, who are adversely affected by the COVID pandemic, are eligible for entry into the program.

A landlord, who goes into a forbearance program with Fannie Mae or Freddie Mac, however, must inform its tenants in writing about the various tenant protections that are available during the property owner's forbearance and repayment periods, and it must agree not to evict the tenants solely for nonpayment of rent while the property is in forbearance.

The additional tenant protections that apply during the repayment periods are as follows: (i) giving the tenants at least a 30-day notice to vacate; (ii) not charging the tenants late fees or penalties for nonpayment of rent; and (iii) allowing tenant flexibility in the repayment of back-rent.

II. HB340 (VA. CODE §44-209)

In response to the COVID-19 pandemic, the Virginia General Assembly likewise enacted House Bill 340, which is now cited as Virginia Code §44-209. This code section initially was designed to protect federal government employees during a government shutdown. Consequently, a defendant/resident in an unlawful detainer action based on nonpayment of rent, which such rent became due after the commencement of a closure of the United States government, shall be granted a 60-day continuance of such unlawful detainer action from the initial court date if the resident appears on such court date and provides written proof that he/she was furloughed or otherwise was or is not currently receiving wages or payments as a result of a closure of the United States government, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government. The provisions of this subsection shall not apply if the landlord has filed a material noncompliance notice for a violation of the rental agreement or of the Code of Virginia unrelated to nonpayment of rent.

House Bill 340 was later amended to afford a 60-day continuance or stay of an unlawful detainer action applicable to any resident affected by the COVID-19 pandemic during the period for which the Governor has declared a state of emergency. The provisions created by this amendment included any owner who (a) rents a residential dwelling unit, regardless of its size or capacity, located within the Commonwealth, and (b) is affected by the pandemic.

To avail themselves of this protection, the defendant/resident will have to appear on the court date and will have to provide the court with written proof that he or she has

been adversely affected economically by the COVID-19 pandemic. The terms “affected by” and “written proof” are defined as follows:

"Affected by" means to experience a loss of income from a public or private source due to the emergency, such that the affected party must request a stay or a continuance, as applicable, by providing written proof to a court or lender, as applicable, stating that he or she is not currently receiving wages or payments from a public or private source as a result of the emergency.

"Written proof" means (i) a paystub showing zero dollars in earnings for a pay period within the period for which the Governor has declared a state of emergency in response to the COVID-19 pandemic, (ii) a copy of a furlough notification letter or essential employee status letter indicating the employee's status as nonessential due to the emergency, or (iii) any other documentation deemed appropriate by a court or lender.

Per the AG’s July 15th opinion letter, Virginia Code §44-209 affords a qualifying resident with a 60 day continuance, and thus the courts lack the discretionary authority to either deny the request or to grant it for a period less than 60 days.

The provisions related to the COVID-19 amendment to House Bill 340 shall expire 90 days following the end of a state of emergency declared by the Governor in response to the COVID-19 pandemic. At this time, the state of emergency in Virginia expired on June 30, 2021, so this COVID-19 related provision expired on September 28, 2021.

III. CDC ORDER

On September 4, 2020, the Centers for Disease Control and Prevention (“CDC”) issued an order banning evictions for certain renters through December 31, 2020, which was later extended several times during 2021. The CDC issued the aforesaid eviction moratorium to protect public health and to prevent further spread of COVID-19. The order was separate and independent from the expired CARES Act eviction moratorium.

The last version of the CDC Order applied to all U.S. counties that were experiencing substantial and high levels of community transmission levels of SARS-CoV-2, as defined by the CDC, as of August 3, 2021. If a U.S. county that is not covered by this Order as of August 3, 2021 later experiences substantial or high levels of community transmission while this Order is in effect, then that county will likewise become subject to this Order as of the date the county begins experiencing substantial or high levels of community transmission. If a U.S. county that is covered by this Order no longer experiences substantial or high levels of community transmission for 14 consecutive days, then this Order will no longer apply in that county, unless and until the county again experiences substantial or high levels of community transmission while this Order is in effect. The CDC website provided a map of the United States, wherein you could check to see if your local jurisdiction was covered by this Order. At last check, approximately 92% of the United States was covered by this Order.

Wherever there is a state, local or territorial residential eviction moratorium in effect that provides for the same or greater level of public-health protection, those protections supersede the CDC order. To that end, Virginia's enacted legislation discussed in more detail herein would appear to have satisfied this provision, which would in effect have mooted the CDC order as it applied to Virginia. Nonetheless, the CDC order was still being considered and enforced when raised in Virginia courts. To be eligible for the eviction protections under the CDC order, residents had to sign a declaration form and meet the requirements outlined in the order, which are also described in the declaration form.

On April 19, 2021, the Consumer Financial Protection Bureau ("CFPB") issued an interim final rule in support of the CDC's eviction moratorium. The CFPB's rule requires debt collectors to provide written notice to tenants of their rights under the eviction moratorium and prohibited debt collectors from misrepresenting a tenant's eligibility for protection from eviction under the moratorium. The CDC has established the eviction moratorium to protect the public health and reduce the spread of the virus. Debt collectors who evict tenants who may have rights under the moratorium without providing notice of the moratorium or who misrepresent tenants' rights under the moratorium can be prosecuted by federal agencies and state attorneys general for violations of the Fair Debt Collection Practices Act ("FDCPA") and are also subject to private lawsuits by tenants. Multifamily property owners and management agents are encouraged to inform residents of the eviction protections under the CDC order and the required declaration form. In particular, owners of HUD-assisted and FHA-insured properties, who are notifying residents that their tenancy will be terminated for nonpayment of rent or fees while this order remains in full force and effect, should inform residents of the protections available to them under this order and should document such notifications in the resident's file.

The suggested disclosure language is as follows:

Because of the COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under Federal law. Visit <http://www.cfpb.gov/eviction> or call a housing counselor at 800-569-4287 to learn more.

If a resident failed to complete and to submit the declaration form, then the landlord was permitted to proceed with the unlawful detainer action, including an execution of the writ. On the other hand, if the resident did submit the declaration form at any time during the eviction process, the landlord would have to stay any further action on the nonpayment of rent case until after the moratorium period has expired.

On or about August 29, 2021, in the case styled Alabama Association of Realtors, et al. v. Department of Health and Human Services, et al., Case No. 21A23, Aug. 26, 2021, the United States Supreme Court, in a 6-3 decision, struck down the CDC nationwide eviction moratorium.

IV. HB 5005 & HB 7001 BUDGET AMENDMENT

With the lifting of the declared state of emergency on June 30, 2021, the mandatory requirements set forth in HB 5005 expired and thus were not applicable to any unlawful entry and detainer actions based on nonpayment of rent, whose termination notices were dated on or after July 1, 2021. Please note, however, that HB 5005 remained in full force and effect for any such nonpayment of rent actions that were based on termination notices dated prior to July 1, 2021.

On August 10, 2021, however, the Virginia General Assembly enacted HB 7001, which essentially is a reinstatement of the mandatory requirements set forth under HB 5005. HB 7001 will remain in full force and effect until June 30, 2022.

Of note, HB 7001 §16.a.2. provides in pertinent part that “[t]he written (14 day) notice shall also inform the tenant that the owner, landlord, or owner's licensed agent shall apply for rental assistance on the tenant's behalf within 14 days of serving the notice on the tenant, unless the tenant pays in full, enters into a payment plan or informs the landlord that they have already applied for rental assistance. The landlord shall apply for rental assistance on behalf of the tenant no later than 14 days after serving the written notice on the tenant, unless they receive the full amount owed by the tenant or confirmation from the tenant that the tenant has applied for rental assistance before the 14th day, or they have entered into a payment plan with the tenant.”

Further, HB7001 §16.e. states that “[n]othing in this section shall void any judgment for possession validly obtained by a landlord prior to the effective date of this act; however, a landlord shall not initiate, maintain, or advance any legal process to obtain possession of a dwelling unit for non-payment of the rent unless the landlord complies with the provisions of this section.”

As for the remainder of HB7001, it appears to mirror HB5005 as follows: upon enactment of this act and through June 30, 2022, no landlord shall terminate a residential tenancy, or take any action to obtain possession of a dwelling unit, for nonpayment of rent, if the eligible tenant has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the coronavirus pandemic, except as follows:

1. If rent is unpaid when due, or if a payment under the terms of a payment plan is unpaid when due, the landlord shall, pursuant to § 55.1-1202, Code of Virginia, serve a written notice on the tenant that informs the tenant of the Virginia Rent Relief Program and provides the website address and statewide telephone number for that program. The written notice shall also provide information on how to reach 2-1-1 Virginia to determine whether there are any other available federal, state and local rent relief programs.

2. The written notice shall also inform the tenant that the owner, landlord, or owner's licensed agent shall apply for rental assistance on the tenant's behalf within 14

days of serving the notice on the tenant, unless the tenant pays in full, enters into a payment plan or informs the landlord that they have already applied for rental assistance. The landlord shall apply for rental assistance on behalf of the tenant no later than 14 days after serving the written notice on the tenant, unless they receive the full amount owed by the tenant or confirmation from the tenant that the tenant has applied for rental assistance before the 14th day, or they have entered into a payment plan with the tenant.

If the tenant has applied for rental assistance, the landlord shall cooperate with the tenant's application, by providing all information and documentation required to complete the application, including but not limited to the W-9 form and any supporting affidavits. In an initial application, if the landlord or the tenant does not receive written approval from the Virginia Rent Relief Program or any other federal, state, or local rent relief program within forty-five days of when a completed application for assistance is made by the tenant or the landlord, the landlord may proceed to obtain possession of the premise as provided in § 55.1-1251.

For any subsequent application, if the landlord or tenant does not receive written approval from the Virginia Rent Relief Program or any other federal, state, or local rent relief program within fourteen days of submission of the subsequent completed application, the landlord may proceed to obtain possession of the premises as provided in § 55.1-1251. If a tenant, who has not paid in full or entered into a payment plan with the landlord within 14 days after the written notice is served, refuses to apply for rental assistance and also refuses to cooperate with the landlord in providing information and documentation required to complete the application made by the landlord, or if such tenant is determined ineligible for rental assistance, or there are no longer funds available through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L.950 116-136) and from the American Rescue Plan Act of 2021 (ARPA) (P.L. 117-2) for rental assistance through the Virginia Rent Relief program, the landlord may take action to obtain possession of the tenant's dwelling unit as provided in § 55.1-1251, Code of Virginia.

If a landlord reports to a consumer reporting agency or debt collector regarding a tenant who is participating in the repayment plan or receiving assistance from a federal, state, or local rent relief program, the landlord shall report the account as "current" in accordance with the Public Law 116-136: Coronavirus Aid, Relief, and Economic Security Act.

If a tenant is complying with a written payment plan with the landlord or has resolved any non-payment of rent, the landlord cannot take any action to obtain possession of a dwelling unit for non-payment of rent.

Nothing in this section relieves either the landlord or the tenant from their obligations to maintain the dwelling as those obligations are set forth in Article 2 and Article 3 of Chapter 12 of Title 55.1.

Nothing in this section shall void any judgment for possession validly obtained by a landlord prior to the effective date of this act; however, a landlord shall not initiate, maintain, or advance any legal process to obtain possession of a dwelling unit for non-payment of the rent unless the landlord complies with the provisions of this section.

V. VIRGINIA CODE §55.1-1245(F)

This amendment to Virginia Code §55.1-1245 mirrors the above HB 5005 and HB7001 with the following exceptions. The relief is not triggered by pandemic related economic issues and there is no provision for RRP relief. Instead, for landlords, who own four or less dwelling units in Virginia, if a resident defaults on the payment of rent, the landlord must serve the resident with a 14 day notice wherein the past it would have been the traditional 5 day notice of nonpayment. If the outstanding balance is not satisfied within the 14 day period, then the landlord may proceed to court.

For landlords, who own more than four dwelling units or more than 10% in more than four rental dwelling units in Virginia, if a resident defaults on the payment of rent, the landlord must serve the resident with a 14 day notice in which the resident is offered a payment plan or the resident may pay the outstanding balance in full within the 14 day notice period.

After service of the 14 day notice, if the resident fails to enter into a payment plan or other alternative payment arrangements acceptable to the landlord and fails to timely pay the outstanding balance due in full within the 14 day notice period, then landlord may terminate the lease and proceed to obtain possession of the leased premises.

If a payment plan is selected, the resident shall pay the total amount due minus any late fees in equal monthly installments over a period of the lesser of six months or the remaining time under the rental agreement, with no late fees being assessed during any time period in which the resident is making timely payments under the payment plan. The resident shall have 14 days from the due date to pay the monthly installments required under the plan. If the resident defaults on the payment plan, the landlord is to afford the resident with yet another 14 day notice informing the resident that the total outstanding balance needs to be paid within the 14 day notice period or the landlord may terminate the lease and proceed to obtain possession of the leased premises. The option for a payment plan is only available once during the course of the current rental agreement.

VI. LATE FEES

In 2020, Virginia Code §55.1-1204(E) was amended, which now provides that a landlord shall not charge a resident for late payment of rent unless such charge is provided for in the written rental agreement. Further, no such late charge shall exceed the lesser of 10% of the periodic rent or 10% of the remaining balance due and owed by the resident. For example, if the monthly periodic rent is \$1,000.00, then the late fee would be \$100.00. If due to a partial rent payment for that month, the outstanding account balance was actually \$500.00, then the late fee would be \$50.00.

VII. STATEMENT OF TENANT RIGHTS AND RESPONSIBILITIES

Pursuant to Virginia Code §55.1-1204(H), as amended, as of July 1, 2020, the landlord is to provide a prospective resident with a copy of the written lease agreement and with a copy of a Statement of Tenant Rights and Responsibilities, as created and drafted by the Virginia Department of Housing and Community Development. In addition, the parties to the lease agreement are to sign a written acknowledgement that the resident has received from the landlord a copy of the Statement of Tenant Rights and Responsibilities. The failure of the landlord to deliver such a lease agreement and statement shall not affect the validity of the lease agreement. The landlord, however, shall not file or maintain an action against the resident in a court of law for any alleged lease violation until the landlord has provided the resident with the Statement of Tenant Rights and Responsibilities. This requirement is not applicable to lease agreements entered into prior to July 1, 2020.

Further, the landlord is only required to provide to a prospective resident copies of the Statement of Tenant Rights and Responsibilities and of the proposed lease agreement, but there is no obligation for the landlord to obtain the prospective resident's endorsement of the statement's acknowledgment form unless or until the parties actually sign the lease agreement.

To that end, the statute further provides that the landlord has 30 days from the "effective date" of the lease agreement to provide the resident with copies of the lease agreement and of the Statement of Tenant Rights and Responsibilities. The VRLTA defines the term "effective date" as the date on which the rental agreement is signed by the landlord and by the resident obligating each party to the terms and conditions of the rental agreement. Thus, the acknowledgment form for the Statement of Tenant Rights and Responsibilities does not have to be signed unless or until the lease is likewise signed by the parties.

VIII. TERMINATION NOTICES

As of July 1, 2020, Virginia Code §55.1-1202(D) was amended to provide that no notice of termination of tenancy served upon a resident receiving tenant-based rental assistance through (i) the Housing Choice Voucher Program or (ii) any other federal, state, or local program by a private landlord shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the statewide legal aid telephone number and website address. In addition, no notice of termination of tenancy served on a public housing resident is effective unless it contains on the first page, the name, address, and telephone number of the legal services program, if any, serving the jurisdiction in which the rental premises are located.

IX. ACCEPTANCE OF RENT WITH RESERVATION AND RIGHT OF REDEMPTION

The rules governing the acceptance of rent with reservation and a tenant's redemption rights during the eviction process are found in Virginia Code § 55.1-1250, which was recently amended during the 2021 General Assembly session. Thus, as of July 1, 2021, no landlord may accept full payment of rent, as well as any damages, money judgment, award of attorney fees, and court costs, and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed and proceed with an eviction, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.

However, a landlord may accept partial payment of rent and other amounts owed by the tenant to the landlord and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action and proceed with an eviction for nonpayment of rent, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit.

Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55.1-1245, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant any subsequent written notice. Such notice shall also include the following language:

"Any partial payment of rent made before or after a judgment of possession is ordered will not prevent your landlord from taking action to evict you. However, full payment of all amounts you owe the landlord, including all rent as contracted for in the rental agreement that is owed to the landlord as of the date payment is made, as well as any damages, money judgment, award of attorney fees, and court costs made at least 48 hours before the scheduled eviction will cause the eviction to be canceled, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord."

If the landlord elects to seek possession of the dwelling unit pursuant to Virginia Code § 8.01-126, the landlord shall provide a copy of this notice to the court for service on the tenant, along with the summons for unlawful detainer. (See 2021 amendments to Virginia Code Sections 55.1-1250.)

Further, during the 2021 General Assembly session, a resident's right of redemption (Virginia Code §55.1-1250(D)) has been amended to provide as follows. In cases of unlawful detainer, a resident, or any third party on behalf of a resident, may pay the landlord or the landlord's 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 and as provided by law, (iv) reasonable attorney fees as contracted for in the rental agreement and as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.

If such payment has not been made as of the return date for the unlawful detainer, the resident, or any third party on behalf of the resident, may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late charges, costs of court, any civil recovery, attorney fees, and sheriff fees, including the sheriff fees for service of the writ of eviction if payment is made after issuance of the writ, no less than 48 hours before the date and time scheduled by the officer to whom the writ of eviction has been delivered to be executed. Upon receipt of such payment, the landlord, or the landlord's attorney or managing agent, shall promptly notify the officer to whom the writ of eviction has been delivered to be executed that the execution of the writ of eviction shall be canceled. If the landlord has actual knowledge that the resident has made such payment and willfully fails to provide such notification, such act may be deemed to be a violation of §55.1-1243. In addition, the landlord shall transmit to the court a notice of satisfaction of any money judgment in accordance with §8.01-454.

Upon receiving a written request from the resident, the landlord, or the landlord's attorney or managing agent, shall provide to the resident a written statement of all amounts owed by the resident to the landlord so that the resident may pay the exact amount necessary for the resident to exercise his right of redemption pursuant to this section. Any payments made by the resident shall be by cashier's check, certified check, or money order. A court shall not issue a writ of eviction on any judgment for possession that has expired or has been marked as satisfied. Finally, the exercise of a resident's right of redemption will now be unlimited.

X. EVICTION DIVERSION PILOT PROGRAM

Effective July 1, 2020, Virginia Code §55.1-1260, *et seq.* will be enforced in the general district courts for the cities of Danville, Hampton, Petersburg and Richmond, which established an Eviction Diversion Pilot Program. The purpose of the Program is to reduce the number of evictions of low-income persons. Notwithstanding any other provision of law, no eviction diversion court or program shall be established except in conformance with this section. The Program will expire on July 1, 2023. The parameters of the Program are set forth in Virginia Code §55.1-1262, as amended.

XI. AFFIDAVITS FOR UNLAWFUL DETAINER PROCEEDINGS

To ensure compliance with the above referenced statutes and regulations, courts are requiring plaintiffs or their attorneys to file affidavits together with the Summons for Unlawful Detainer and with the Writ of Eviction attesting that the statutory requirements as discussed herein have been satisfied and addressed.

XII. VIRGINIA CODE §§ 55.1-1243.1 & 55.1-1252

Virginia Code Section 55.1-1252 expressly prohibits the landlord from recovering possession except by lawful and permitted means. Consequently, Virginia law no longer recognizes the right of “self-help” in residential landlord and tenant situations. Self-help remedies are still available in nonresidential tenancies. (*See* Va. Code § 55.1-1415.)

Further, as of July 1, 2021, Virginia Code § 55.1-1243.1 will provide a tenant with certain statutory remedies in the event that a landlord willfully and without authority from the court (i) removes or excludes the tenant from the dwelling unit unlawfully, (ii) interrupts or causes the interruption of an essential service to the tenant, or (iii) takes action to make the premises unsafe for habitation. A prevailing tenant shall recover (i) the actual damages sustained by said tenant; (ii) statutory damages of \$5,000 or four months' rent, whichever is greater; and (iii) reasonable attorney fees.

