

Virginia Imposes New Requirements on Residential Landlords

By Jessica A. Glajch

OVERVIEW

[Virginia's Revised Biennial Budget Bill, HB 5005](#), has imposed significant new obligations on residential landlords. Beginning January 1, 2021 and continuing throughout the State of Emergency declared by the Governor pursuant to [§ 44-146.17 of the Code of Virginia](#), a landlord must meet these new requirements before the landlord can terminate a residential tenancy or take any action to obtain possession of a premises for nonpayment of rent due to lost income or additional expenses resulting from the declared state of emergency. These obligations do not extend to landlords for nonresidential properties.

THE 14-DAY NOTICE AND PAYMENT PLAN REQUIREMENTS

A landlord who owns four or fewer dwelling units must serve written notice on a tenant of his or her nonpayment of rent and of the landlord's intention to obtain possession of the premises if the rent is not paid within 14 days after the written notice is served. This is a significant increase from the 5 days previously required.

A landlord who owns more than four rental dwelling units or who owns more than a 10% interest in more than four dwelling units must provide a tenant with the 14-day notice described above. However, that notice must also:

- Inform the tenant of the total amount due and owed;
- Inform the tenant that if he or she provides a signed statement certifying that he or she has experienced additional expenses or a loss of income due to the declared state of emergency, he or she may, but is not required to, enter into a payment plan under which he or she must pay the total amount due and owed in equal monthly installments over a period of the lesser of six months or the time remaining under the rental agreement; and
- Inform the tenant that if he or she fails to pay the amount due and owed, or enter into the payment plan offered, or enter into an alternative payment arrangement that is acceptable to the landlord, the landlord may proceed to obtain possession of the premises as provided in [§ 55.1-1251 of the Code of Virginia](#).

The landlord may proceed to obtain possession of the premises if:

- The tenant fails to pay in full or enter into a payment plan with the landlord within 14 days of when written notice is served; or
- The tenant enters into a payment plan, and after the plan becomes effective, he or she fails to pay any installment required by the plan within 14 days of its due date. However, the landlord must send a new 14-day notice to the tenant.

The majority of these provisions are also contained in [HB 5064](#), which took effect on November 9, 2020, and amended the Virginia Residential Landlord and Tenant Act.

THE LANDLORD'S OBLIGATION TO WORK WITH THE TENANT TO ACCESS RENTAL ASSISTANCE

The Budget Bill also requires a residential landlord to work with a tenant to access rental assistance, including through the Virginia Residential Mortgage and Relief Program ("VRMRP"), before a landlord can take any action to obtain possession of the premises.

If rent is unpaid or if a payment under the terms of a payment plan is unpaid when due, the landlord must notify the tenant in writing about available resources, specifically, about the VRMRP and how to reach 2-1-1 Virginia to determine additional federal, state and local rent relief programs. The written notice must inform the tenant that the landlord will apply for rental assistance with the VRMRP on the tenant's behalf or the landlord will cooperate with the tenant's application for rental assistance with the VRMRP by providing required documentation. These documents include a W-9 IRS form and any supporting affidavit.

Unless the tenant informs the landlord that he or she is applying directly for rental assistance funds, the landlord must apply for rental assistance on the tenant's behalf within 14 days of serving the default notice.

The landlord may proceed to obtain possession of the premises if:

- The tenant refuses to apply for rental assistance and refuses to cooperate with the landlord in applying for rental assistance; or
- The landlord or tenant does not receive written approval of a rental assistance application within 45 days of submission; or
- The landlord or tenant does not receive written approval of a subsequent rental assistance application within 14 days of submission; or
- The tenant does not qualify for the VRMRP or any other federal or state rent relief program; or
- The rent relief programs have run out of funds.

RECENTLY PROPOSED AMENDMENTS TO THE BUDGET BILL

On February 27, 2021, the Virginia General Assembly passed an amended [House Bill 1800](#) (the 2020-2022 biennial budget bill), which clarifies the requirements for residential landlords and tenants to apply for rental assistance before landlords can proceed to obtain possession of dwelling units. HB 1800 has been sent to the governor for approval, and if signed into law, it would:

- Identify Virginia's relief program as the Virginia Rent Relief Program rather than the Virginia Rent and Mortgage Relief Program to reflect the fact that new funding includes rent relief but not mortgage relief;
- Require that the landlord not only notify the tenant in writing about the Virginia Rent Relief Program, but also provide the *website address and statewide telephone number for the program*;
- Require the landlord to notify the tenant in writing that the landlord 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 he or she has already applied for rental assistance;
- Clarify that the landlord is not required to apply for rental assistance on behalf of the tenant if the landlord receives 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 if the landlord has entered into a payment plan with the tenant;

- Allow the landlord to apply to any rent relief program on the tenant's behalf rather than requiring the landlord to apply specifically to the Virginia Rent Relief Program;
- Impose an affirmative obligation on the landlord to cooperate with the tenant's application for rental assistance by providing all information and documentation required to complete the application, including but not limited to the W-9 IRS form and any supporting affidavits, rather than merely requiring the landlord to inform the tenant of this obligation through written notice; and
- Provide that the Budget Bill's requirements will not void judgments for possession validly obtained prior to November 18, 2020, but a landlord may not initiate, maintain or advance legal process to obtain possession for nonpayment of rent unless the landlord complies with the requirements.

QUICK REFERENCE FOR UNLAWFUL DETAINER ACTIONS AND WRITS OF EVICTION

In order to obtain a judgment for possession in an unlawful detainer action or a writ of eviction, a landlord must comply with the requirements contained in Virginia's Budget Bill. Below is a checklist of documentation and evidence that a landlord must provide in order to establish that he or she is entitled to a judgment of possession and/or a writ of eviction.

1. Nonpayment of Rent Where the Landlord Owns Four or Fewer Dwelling Units in Virginia

- a. **If the tenant refuses to apply for rental assistance and refuses to cooperate with the landlord's application for rental assistance on behalf of tenant, the landlord must provide:**
 - 14-day pay or vacate notice;
 - Written notice informing the tenant of the VRMRP and 2-1-1 Virginia; and
 - Documentation or evidence of the tenant's failure to cooperate with the landlord's application for rental assistance.
- b. **If an application to the VRMRP or another rent relief program has been made but written approval has not been received within 45 days of a first application or 14 days of a subsequent application, the landlord must provide:**
 - 14-day pay or vacate notice;
 - Written notice informing the tenant of VRMRP and 2-1-1 Virginia;
 - Documentation of the first and/or subsequent funding application; and
 - Documentation of the status of the pertinent application.
- c. **If the tenant is not eligible for VRMRP assistance (or other federal, state, or local programs) or the programs no longer have funds available, the landlord must provide:**
 - 14-day pay or vacate notice; and
 - Documentation or evidence of the tenant's ineligibility for rent relief programs or the exhaustion of the funds from those rent relief programs.

2. Nonpayment of Rent where the Landlord Owns More Than Four Rental Dwelling Units or More Than a 10% Interest in More than Four Rental Dwelling Units in Virginia

- a. If the tenant failed to pay, vacate, or enter into a payment plan, or defaulted on a payment plan, and an application to the VRMRP or another rent relief program has been made but written approval has not been received within 45 days of a first application or 14 days of a subsequent application, a landlord must provide:**
- Written notice to pay or enter a payment plan;
 - 14-day pay or vacate notice;
 - Written notice informing the tenant of the VRMRP and 2-1-1 Virginia;
 - Documentation of the first and/or subsequent funding application; and
 - Documentation of the status of the pertinent application.
- b. If the tenant refuses to apply for rental assistance and refuses to cooperate with the landlord's application for rental assistance on behalf of the tenant, a landlord must provide:**
- Written notice to pay or enter a payment plan;
 - 14-day pay or vacate notice;
 - Written notice informing the tenant of the VRMRP and 2-1-1 Virginia; and
 - Documentation or evidence of the tenant's failure to cooperate with the landlord's application for rental assistance.
- c. If the tenant is not eligible for VRMRP assistance (or other federal, state, or local programs) or the programs no longer have funds available, a landlord must provide:**
- Written notice to pay or enter a payment plan;
 - 14-day pay or vacate notice;
 - Written notice informing the tenant of the VRMRP and 2-1-1 Virginia; and
 - Documentation or evidence of the tenant's ineligibility for rent relief programs or the exhaustion of funds from those rent relief programs.