

Virginia State Landlord Tenant Law

*An overview of state
statutes relevant to
landlords and tenants*

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Introduction to VLAS

- Non-profit law firm providing civil legal assistance to low-income individuals.
- Income qualification requirements.
- No fee for our services.
- Handle variety of civil legal issues.
Benefits, housing, consumer, domestic violence, wills, etc.
- Housing cases prevalent in our Lynchburg office.

Overview of Eviction

- How do they work?
- Valid eviction must first have a termination notice.
- Once the termination date passes, court action can begin.
- Court hearing scheduled and judge rules.
- If possession granted, 10 days to appeal or move out.

Eviction Data in Lynchburg

- No Lynchburg data in the national study done by Princeton's Eviction Lab.
- Numbers are high. 1200 a year (3 per day).
- 10th nationally; 4th in the state for mid-sized cities

Eviction Data in Lynchburg

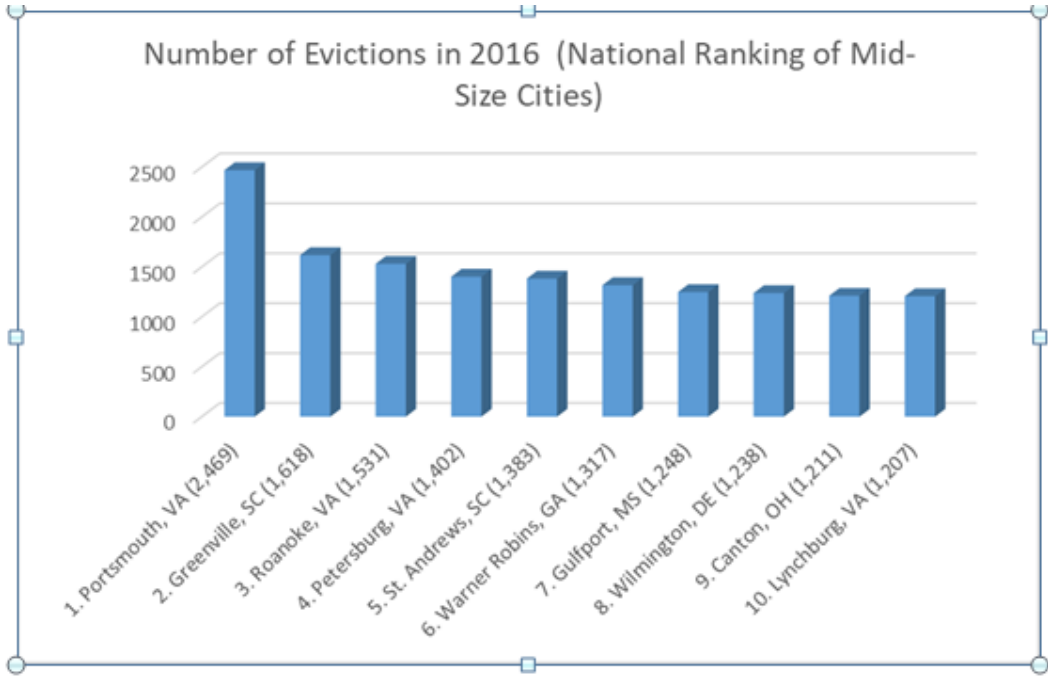


Fig. 1

Eviction Data

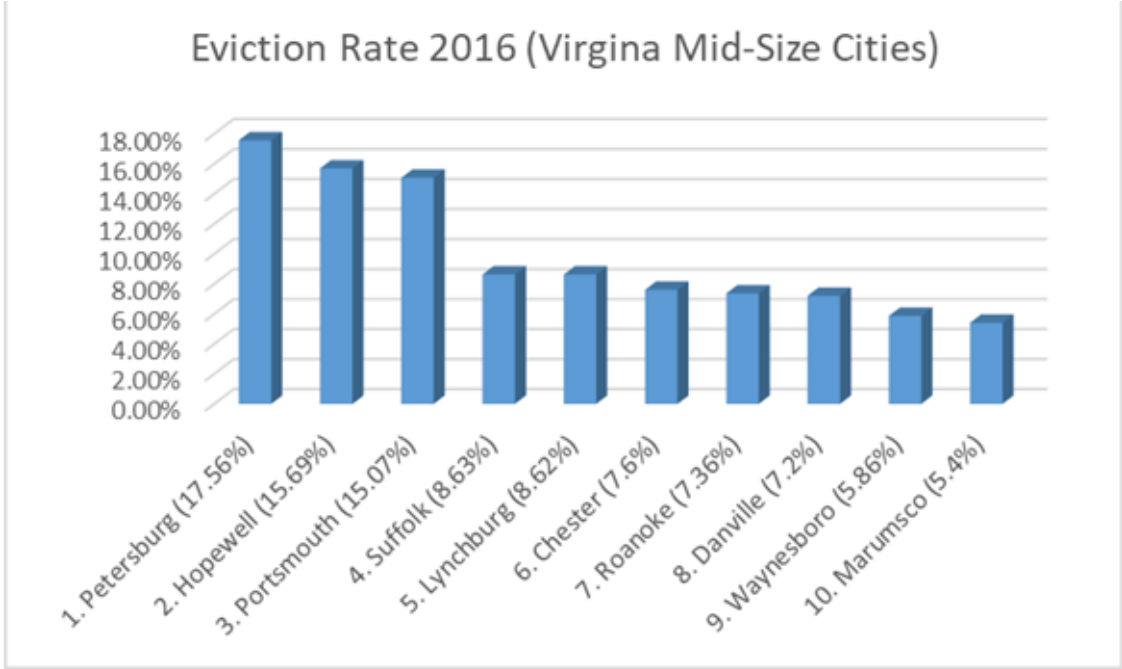


Fig. 5

Eviction Data

- Eviction rate is 5th in the state in mid-sized cities.
- Eviction rate is also 5th among large cities (100K+).

Housing Stability/Eviction Prevention

- VLAS community event held Oct. 8th.
- Common issues that we heard.
- Developing solutions to the problem that affects our community.

New Laws in 2019

- Broader “Pay and Stay” protections.
 - Redemption right can be used up to 2 days before writ.
- “Use writ or lose writ”
 - After judgment, writ only available for 6 months.
- Appeal to circuit court is easier in rent case.
 - Pay rent as you go during appeal.
- Written lease required; if none, 12 months.

Three Key Acts

- **Virginia Residential Landlord and Tenant Act:** Governs most, but not all, residential tenancies in Virginia
- **Landlord Tenant Act:** Governs private tenancies exempted from the VRLTA and MHLRA that do not involve any federal subsidy
- **Manufactured Home Lot Rental Act:** Governs most rentals of lots in mobile home parks; incorporates parts of the VRLTA for those who own their mobile home.

VRLTA

- Applies to all single-family and multifamily residential dwelling units.
- Changes to the application in the law, broadly applicable now.

Tenancies Exempt from VRLTA

- Exemptions should be read narrowly
- Even otherwise exempt tenancies may be covered by the VRLTA IF the lease expressly provides

Tenancies exempt from VRLTA

- Tenancies in hotels, motels, vacation cottages, boardinghouses or similar lodging, except when such a tenancy continues for more than ninety consecutive days
- Occupancy in a fraternal or social organization in the portion of the structure operated for the benefit of the organization
 - **VA Code 55-248.3:1**

Tenancies exempt from VRLTA

- Residence at a public or private institution for medical, geriatric, educational, counseling, religious or similar services
- Tenancies where tenant pays no rent (i.e. is a guest of the owner)
- Tenancies governed by HUD where the HUD regulations conflict with the VRLTA
 - **VA Code 55-248.3:1**

Rental Agreement (VRLTA)

- Landlord and tenant may include in rental agreement terms such as rent, late fees, automatic renewal of rental agreement, and other provisions not prohibited by law
- Rent amount is set in rental agreement. If no agreement, rent is fair rental value
 - **VA Code 55-248.7**

Receipts and Accounting (VRLTA):

- If a tenant pays rent by cash or money order and requests a receipt from the landlord, the landlord MUST provide the tenant with a written receipt
- If a tenant makes a written request for an accounting, the landlord MUST provide tenant with a written statement showing all charges and debits for the past 12 months within 10 business days of request
- **VA Code 55-248.7**

Late Fees

- Late fees are generally set forth in lease and must be “reasonable”
- Courts may treat a per diem late fee as impermissible/unreasonable.
- Must reflect actual loss (late fee on mortgage—5%?).
- Interest is appropriate measure on loss of funds.

Notice of Termination of Tenancies

- Week to week tenancies may be terminated with written notice served at least 7 days before the next rent due date
- Month to month tenancies may be terminated by serving a written notice at least 30 days before the next rent due date
 - **VA Code 55-248.37**

References and Release of Information

- **If tenant has NOT given written consent, landlord may NOT release information about the tenant unless it is:**
 - A matter of public record
 - A summary of the tenant's rent payment record
 - A remediable breach notice that was not remedied
 - A non-remediable breach notice
 - **VA Code 55-248.9:1**

Prohibited Provisions

- A lease cannot include a provision through which the tenant waives any right or remedy under the VRLTA
- Any such prohibited provisions are unenforceable and if LL brings action to enforce tenant can recover actual damages and reasonable attorneys fees
 - **VA Code 55-248.9**

Landlord Obligations (VRLTA)

- **Duty to Inspect and Provide Damages List:**
 - Within 5 days of occupancy, LL must provide tenant with written, itemized list of damages to unit existing at time of occupancy, tenant has 5 days to object
 - LL may have policy allowing tenant to prepare list (in which case LL has five days to object) or for them to do it jointly
 - **VA Code 55-248.11:1**

Landlord Obligations (VRLTA)

- **Disclosure of Mold in Dwelling Unit:**

- LL must disclose visible evidence of mold as part of move-in inspection
- Written report of “no mold” deemed correct unless tenant objects in writing within 5 days
- If LL discloses visible evidence of mold, tenant may terminate the tenancy, or tenant can stay and LL must fix mold
 - **VA Code 55-248.11:2**

Landlord Obligations (VRLTA)

- **Additional Disclosures:**

- Pesticide Use: LL must provide at least 48 hours' written notice of pesticide application (unless tenant requests or agrees to shorter notice)
 - **VA Code 55-248.13:3.**

Landlord Obligations (VRLTA)

- **Duty to Maintain Fit Premises:**
 - LL must comply with building and housing code regarding health and safety; make necessary repairs; maintain appliances and heating, cooling and plumbing systems in good working order, etc.
 - **VA Code 55-248.13**
 - Remedies for LL's Noncompliance include: Termination of lease/damages; tenant's assertion; defense to non-payment of rent; injunction; damages and rent abatement/substitute housing

Landlord Obligations (VRLTA)

- **Security Deposit:**
- Limited to two months' rent
- Upon termination, must be applied to rent, late fees, damages or other things specified in lease
- LL must return security deposit within 45 days of lease termination; if there are deductions, LL must provide written accounting
 - **VA Code 55-248.15:1**

Landlord Obligations (VRLTA)

- **Security Deposit:**
- LL may withhold additional money for bill owed by tenant to a third party utility provider, as long as he gives notice to tenant, an opportunity for tenant to pay, and evidence that he (LL) has paid the bill
 - **VA Code 55-248.15:1**

Landlord Obligations (VRLTA)

- **Security Deposit:**
- LL must make reasonable efforts to notify tenant of his/her right to be present at move-out inspection
- If Tenant advises the LL in writing of his/her desire to be present at move-out inspection, LL must notify tenant of time and date of inspection (held within 72 hours of termination)
- LL must furnish Tenant a list of itemized damages
 - **VA Code 55-248.15:1**

Landlord Obligations (VRLTA)

- **Security Deposit:**
- If LL willfully fails to comply with requirements, court must order the return of the security deposit and interest, along with actual damages and reasonable attorneys' fees, less any rent owed by the tenant
 - **VA Code 55-248.15:1**

Landlord Obligations (VRLTA)

- **Locks**

- LL must install a new lock (or allow tenant to do so) where tenant presents a copy of a protective order; LL cannot provide new key to person excluded from premises by protective order.

- **VA Code 55-248.18:1**

Landlord Obligations (VRLTA):

- **Abuse of Access:**

- If LL makes an unlawful entry or enters in an unreasonable manner, tenant may seek injunctive relief or terminate lease

- **VA Code 55-248.10:1**

Tenant Obligations (VRLTA)

- **Duty to Maintain Dwelling Unit:**

- Tenant has obligation to do his or her part to comply with code regarding health and safety; keep things clean and safe; use utilities, etc. in reasonable manner; keep all utilities paid for by tenant on at all times; not deliberately damage premises or permit others to do so (guest liability); maintain a smoke detector in accordance with USBC standards, etc.

- **VA Code 55-248.16**

Tenant Obligations (VRLTA)

- **Rules and Regulations:**

- Tenant is obligated to follow reasonable rules of the landlord as long as the rule promotes safety and welfare, is reasonably related to its purpose, applies to all tenants fairly, is clear, does not evade the LL's obligations and the tenant was provided a copy of it when he entered into the lease or when the rule was adopted.

- **VA Code 55-248.17**

Tenant Obligations (VRLTA)

- **Access by LL:**

- LL can enter to inspect, make necessary repairs, supply necessary services, or show unit to prospective tenants, purchasers or workers
- Can enter only at reasonable times and with at least 24 hour prior notice, except in the event of emergency when LL can enter unit without consent
 - **VA Code 55-248.18**

Tenant Obligations (VRLTA)

- **Use and Occupancy by Tenant:**

- Unless otherwise agreed, tenant must use the premises only as a residence
- **VA Code 55-248.19**

- **Surrender Possession of Unit:**

- Tenant must promptly vacate at termination of tenancy or LL can sue for possession, damages and attorneys fees
- **VA Code 55-248.20**

Landlord Remedies (VRLTA)

- **Tenant Noncompliance with Lease:**
 - **Remediable Breach:**
 - Material violation of lease, or violation of Code materially affecting health or safety
 - LL must give written 21/30 day notice to tenant
 - If violation remedied within 21 days, lease continues
 - If tenant intentionally commits similar breach, lease terminates with 30 days written notice from LL
 - **VA Code 55-248.31**

Landlord Remedies (VRLTA and VLTA)

- **Tenant Noncompliance with Lease:**
 - **Nonpayment of rent**
 - 5 day written “pay or quit” notice must be delivered by LL to tenant
 - If tenant does not pay the rent owed within the 5 day period, LL may terminate lease and obtain possession
 - However, once every 12 months tenant may “redeem” by paying everything sued for or providing written promise to pay from agencies or before the first court date; up to 2 days before writ.
 - **VA Code 55-225, 55-243, 55-248.31**

Public Housing

- Notice of 14 days to pay after non-payment.
- Almost all adverse notices must also give the right to an administrative hearing.
- **Ten (10) days to appeal** adverse action with the housing authority.
- Tenants should always appeal!
- Note: Voucher recipients/applicants also have 10 days to appeal.

Landlord Remedies (VRLTA)

- **Tenant Noncompliance with Lease: Non-remediable breach**
- LL may serve written notice on tenant terminating tenancy not less than 30 days from notice
- If breach constitutes criminal or willful act that threatens health or safety of other tenants, LL may terminate lease IMMEDIATELY and initial hearing on LL's claim for possession must be heard within 15 days from date of service on tenant (earlier in emergency) (note: Tenant is held liable for criminal activity of guests and invitees except for special rule when criminal activity is domestic violence committed against tenant)
 - **VA Code 55-248.31**

Landlord Remedies (VRLTA)

- **Tenant Noncompliance with Lease**

- **Illegal Drugs**

- If tenant, tenant's authorized occupant, guest or invitee engages in illegal drug activity involving controlled substance, such activity is a non-remediable breach
 - LL can terminate without criminal conviction if proves case by preponderance of evidence.
 - Tenant presumed to have knowledge of illegal drug activity by guest or invitee.
 - **VA Code 55-248.31**

Landlord Remedies (VRLTA)

- **Tenant's Noncompliance with Lease:**

- **Possible issues regarding breaches –**

- Conduct didn't occur/not tenant's fault
 - Not material
 - Lack of proper termination notice
 - Failure to reserve rights by LL (waiver)
 - Conditions
 - Retaliatory/Discriminatory

Landlord Remedies (VRLTA)

- **Barring Guest or Invitee of Tenant:**

- LL can send written notice to guest and to tenant barring guest for conduct committed on premises that violates lease, local ordinance, state or federal law
- Tenant can challenge the bar notice through a tenant's assertion
- LL may treat Tenant's allowing barred guest to return to premises as material non-compliance with lease
 - **VA Code 55-248.31:01**

Landlord Remedies (VRLTA)

- **Remedy After Termination:**

- LL may have claims for rent, possession and actual damages from breach
- LL cannot sue for accelerated rent; can only seek rent as it becomes due and owing
- LL may simultaneously receive judgment for possession and money
 - **VA Code 55-248.35**

Limits on Landlord Remedies (VRLTA and VLTA)

- **No Self-Help Evictions:**

- LL cannot recover possession by willfully interrupting gas, electric, water or other essential services required by the lease, or by denying tenant access to the unit unless pursuant to court order
- Any lease provision that authorizes self-help evictions is unenforceable
 - **VA Code 55-225.1, VA Code 55-248.36**

Landlord Remedies

- **Landlord may NOT:**

- Lock tenant out (Exception: Owners of hotels, motels and other similar lodging may lock out people who have been living in such lodging fewer than 90 consecutive days. 5 days written notice must be provided if lock-out is for non-payment)
- Cut-off utilities
- Use self-help eviction
 - **VA Code 55-225.1**

Landlord Remedies

- **Eviction: Tenant must move ONLY if:**
 - Landlord files an unlawful detainer;
 - Landlord gets a judgment for possession;
and
 - Landlord gets a writ of possession which is served on the tenant
 - The Sheriff waits at least 72 hours after service of the writ of possession on the tenant before coming back to evict

Landlord Remedies (VRLTA)

- **Disposal of Property After Court Order**
 - After judgment for possession entered, sheriff places the personal property of tenant in public way or at LL's request in storage area designated by LL
 - Tenant has 24 hours to retrieve property (or can retrieve at other reasonable times until LL disposes of property)
 - **VA Code 55-248.38:2**

Tenant Remedies (VRLTA/VLTA):

- **Material Noncompliance by Landlord:**
 - Tenant may serve notice on LL saying lease will terminate in 30 days if specified breach isn't remedied in 21 days
 - If LL breach non-remediable, tenant gives notice of breach and that lease will terminate in 30 days
 - If LL intentionally commits breach for which he has previously received 21/30 notice, tenant can send notice terminating lease in 30 days
 - **VA Code 55-248.21 and 55-225.13**

Tenant Remedies (VRLTA/VLTA)

- **Tenant's Assertion:**

- Remedy for LL material noncompliance with lease or law constituting fire hazard or serious threat to life, health or safety
- Tenant must serve LL written notice advising him of the condition unless LL is notified of the condition by appropriate agency
- If LL doesn't remedy within reasonable time after notice, tenant can file Tenant's Assertion
 - **VA Code 55-248.27 and VA Code 55-225.12**

Tenant Remedies (VRLTA/VLTA)

- **Tenant's Assertion for material noncompliance by LL:**
 - Tenant must pay rent into court after filing
 - Initial hearing held within 15 days of service
 - Possible relief includes awarding money in escrow to tenant, rent abatement, continued payment of rent into escrow until conditions remedied, tenant can choose to terminate the lease
 - **VA Code 55-225.12 and 55-248.27**

Tenant Remedies (VRLTA)

- **LL's Noncompliance as Defense to Action for Possession for Unpaid Rent:**
 - Tenant may assert serious threat to health or safety as defense IF
 - Tenant has served LL written notice of the condition(s) or LL notified by building inspector before action for possession
 - LL didn't remedy condition(s)
 - Tenant paid rent into court
 - **VA Code 55-248.25**

Tenant Remedies (VRLTA/VLTA):

- **Wrongful Failure to Supply Essential Services:**
 - If LL, contrary to lease, willfully or negligently fails to supply essential service (ie water, heat, electricity), tenant may serve a notice on LL and after reasonable time for LL to remedy may get damages or move and not pay rent OR tenant can seek injunction—General Dist. Ct.
 - Tenant can also seek actual damages and attorneys fees
 - **VA Code 55-248.23**

Tenant Remedies (VRLTA):

- Early termination by military personnel:
 - Following members of US armed forces or VA National Guard may terminate lease upon 30 days' notice:
 - FT duty, received permanent change 35 or more miles away
 - Temporary duty order of 35 or more miles away for more than 3 months
 - Discharged
 - Ordered to live in government-supplied quarters
 - **VA Code 55-248.21:1**

Tenant Remedies (VRLTA)

- **LL failure to deliver possession:**
 - If LL willfully fails to deliver possession –
 - Rent abates until delivery of possession
 - Tenant can terminate rent agreement with 5 days written notice
 - Tenant can demand performance and maintain action for possession against LL
 - **VA Code 55-248.22**

Tenant Remedies (VRLTA/VLTA)

- Early Lease Termination for Victims of Domestic and Sexual Violence
 - Applies to tenants who have **either** a final order of protection for family abuse or an order of conviction of sexual assault, sexual abuse or family abuse
 - Tenant must provide landlord written notice of intent to terminate, which must state the termination date.
 - Termination date must be at least 30 days before the next rent payment is due.
 - **VA Code 55-248.21:2 AND 55-225.16**

Manufactured Home Lot Rental Act - Some Key Parts

- Requires park owners to offer all year-round tenants a one year lease
- One year leases automatically renew for one year unless LL gives notice of termination or change 60 days prior to termination of lease
- Limits reasons tenants can be evicted
- Allows evicted tenant right to leave home in the park for up to 90 days in some circumstances
- If LL rents both lot and home may be covered by VRLTA; incorporates much of VRLTA (55-248.48)
 - **VA Code 55-248.41 through 55-248.52**

Fair Housing Act

- Created to end discrimination in any activity related to housing
- Landlords cannot discriminate based on race, color, religion, disability, national origin, sex or presence of children
- Includes renting or selling housing, terms and conditions related to housing, denying housing or housing-related services, making or purchasing a mortgage loan

Fair Housing Act

- Covers private landlords, brokers, property management, sellers, realtors.
- Exemptions: Rooms or units in a dwelling for 4 families with the owner residing in 1 of the units (The Mrs. Murphy exception)
- Complaints under the Fair Housing Act are filed with HUD or Virginia Fair Housing Office

Disability Defined

- A physical or mental impairment which substantially limits 1 or more major life activities;
- A record of an impairment; or
- Being regarded as having such an impairment (whether a person has an impairment or not)

Exceptions:

Current, illegal use or addiction to a controlled substance as defined in section 102 of The Controlled Substances Act

Fair Housing Act

- Discrimination includes:
 - a refusal to allow reasonable accommodations in rules and policies when they are necessary for tenants to use and enjoy their housing.
 - A refusal to allow reasonable modifications of the premises for necessary to use and enjoy the dwelling.

Service or Assistance Animal

- Va. Fair Housing Office has issued guidance.
- Landlord cannot inquire into training of animal.
- Animal need not be certified
- The landlord can get general verification of a disability (not specific about it or severity).

Service or Assistance Animal

- Describe nature of accommodation wanted.
- The relationship between it and the ability to use and enjoy housing/ameliorate disability
- Cannot require a pet deposit.
- Tenant must ensure animal follow other “pet rules.” Care and clean up, etc.

City Inspection Program

- Part of Lynchburg's "Good to Go" Rental Program
- In certain areas of the City of Lynchburg, rental units are subject to inspections
- All landlords must have the property inspected before it is rented.
- If inspection passes, it is done once every four years
- Penalties for failure to report a property and for failure to meet building code

Questions?

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