

Dear Judges and Clerks,

In connection with unlawful detainers and evictions, many of you have asked about both the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), PL 116-136, March 27, 2020, 134 Stat 281, and recent Virginia legislation (House Bill 1420 (Chapter 1231) and House Bill 340 (Chapter 1202).

With regard to the CARES Act, here is a brief summary of considerations to be addressed in unlawful detainer actions, and related resources (a copy is also attached).

Considerations to be Addressed in Unlawful Detainer Actions

- (A) Is the property subject to a federally backed mortgage loan or federally backed multifamily mortgage loan as defined in Section 4024(A0(2)(B) of the CARES Act?
- a. Is the mortgage on the property owned by Freddie Mac or Fannie Mae?
 - b. Is the mortgage on the property guaranteed, provided by, or insured by the U.S. Department of Housing and Urban Development?
 - c. Is the mortgage on the property guaranteed, provided by, or insured by the U.S. Department of Veterans Affairs?
 - d. Is the mortgage on the property guaranteed, provided by, or insured by the U.S. Department of Agriculture?
- (B) Is the property a “covered property” as defined in Section 4024(a)(2)(A) of the CARES Act?
- a. Does the property contain housing covered by the Violence Against Women Act?
 - i. Section 202 housing for the elderly?
 - ii. Section 811 housing for people with disabilities?
 - iii. Housing opportunities for persons with AIDS?
 - iv. Subtitle A of the McKinney-Vento Homeless Assistance Act?
 - v. Home Investment Partnerships?
 - vi. Below Market Interest Rate Housing?
 - vii. Section 236 multifamily rental housing?
 - viii. Section 8 project-based housing?
 - ix. Section 8 Housing Choice Voucher program?
 - x. Public Housing?
 - xi. Section 515 Rural Rental Housing?
 - xii. Sections 514 and 516 Farm Labor Housing?
 - xiii. Section 533 Housing Preservation Grants?
 - xiv. Section 528 Multifamily rental housing?
 - xv. Low-income housing tax credit program?
 - b. Does the property contain housing covered by the rural housing voucher program under section 542 of the Housing Act of 1949?

Resources available to determine if the property is a “covered property”

- (A) This information may be recorded in public land records or may appear in the original mortgage and closing documents
- (B) Anyone can access the following:
- (i) The National Low Income Housing Coalition’s database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. This database does not cover single-family

properties with 1-4 units and does not reflect *all* multifamily properties with Fannie Mae and Freddie Mac mortgages.

(ii) Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage. These resources do not cover single-family properties with 1-4 units.

- i. Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
- ii. Freddie Mac: <https://myhome.freddiemac.com/renting/lookup.html>

(iii) The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>.

(C) Landlords can:

(i) Call the FHA, VA, USDA, Fannie Mae, or Freddie Mac escalation number to inquire as to the status of their mortgage: <https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>

(ii) Look up if Fannie Mae or Freddie Mac own their mortgage by visiting:

- i. <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
- ii. Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
- iii. Freddie Mac: <https://ww3.freddiemac.com/loanlookup>

Resources available to landlords

The CARES Act § 4022 provides for 180 days of forbearance for landlords with federally backed single-family (1-4 unit) mortgages. Landlords have an option to extend for another 180 days. A servicer of a federally backed mortgage loan may not initiate foreclosure processes for “not less than the 60-day period beginning on March 18, 2020.”

The CARES Act § 4023 provides for 30 days of forbearance for landlords with federally backed multifamily (5 or more unit) mortgages who were current on payments as of February 1, 2020, with an option to extend for two additional 30-day periods.

(A) Small Business Association (SBA) “Paycheck Protection Program” may provide relief to landlords with management and maintenance staff: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

(B) Resource for property owners on foreclosure protections in Virginia: https://vplc.org/wp-content/uploads/2020/03/Covid-19_Foreclosure_Fact_Sheet-3-31.pdf

(C) Consumer Financial Protection Bureau provides COVID-19 related mortgage relief options: <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

(D) National Consumer Law Center provides COVID-19 related consumer protections: <https://www.nclc.org/special-projects/covid-19-consumer-protections.html>.

(E) HUD-approved housing counseling agency locations: <https://www.consumerfinance.gov/find-a-housing-counselor/>.

(A) Information for homeowners on avoiding COVID-19 related scams: <https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Fraud-Prevention.aspx>

<https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Documents/COVID-FHFA-Fraud-Flyer-482020.pdf>

With regard to the Virginia legislation, House Bill 1420 (Chapter 1231) amends Code §§ 55.1-1204 and 55.1-1250 to cap the amount a landlord may charge for late fees. See copy attached.

House Bill 340 (Chapter 1202), adds Code § 44-209, and provides a 60-day stay of an unlawful detainer for nonpayment of rent for tenants and a 30-day stay of foreclosure proceedings for homeowners of, and owners who rent to a tenant, a one-family to four-family residential dwelling unit who request a stay and provide written proof that they are (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 who was furloughed or was or is otherwise not receiving wages or payments as a result of a closure of the United States government. The bill includes a second enactment clause extending the bill's protections to the COVID-19 state of emergency. This extension expires 90 days after the Governor's declared state of emergency ends. See copy attached.

To the extent you have questions about the effect of COVID-related legislation, or the Supreme Court's Judicial Emergency Orders, on unlawful detainer proceedings, for the sake of consistency and reliability, please refer to the Orders themselves, as well as to the communications you have received on this topic, including communications from me, and from the Chief Justice. Those materials, along with a collection of FAQs, can be found on the Judicial System's intranet site at

http://www.vacourts.gov/news/items/covid/scv_emergency_orders.pdf and
http://oesinet/courtadmin/emergency_prep/covid19/covid19_intranet_site.pdf.

As always, please let me know if we can provide any further information.

Very truly yours,

Karl

Karl R. Hade
Executive Secretary
Supreme Court of Virginia
100 North 9th Street
Richmond, VA 23219
khade@vacourts.gov

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 - i. <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
 - ii. Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
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VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1202

An Act to amend the Code of Virginia by adding in Chapter 7 of Title 44 a section numbered 44-209, relating to emergency laws; civil relief; citizens of the Commonwealth furloughed or otherwise not receiving wages or payments due to closure of the federal government or declaration of emergency by the Governor.

[H 340]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 7 of Title 44 a section numbered 44-209 as follows:

§ 44-209. Closure of United States government; civil relief for furloughed employees and contractors.

A. As used in this section:

"Closure of the United States government" means a closure of the United States federal government for a period of 14 consecutive days or longer as a result of a lapse of appropriation that leads to (i) the curtailment of federal agency activities and services, (ii) a shutdown of nonessential operations, (iii) nonessential workers being furloughed, and (iv) only essential employees in departments covering the safety of human life or protection of property being retained.

"Written proof" means (i) a paystub issued by a federal government agency showing zero dollars in earnings for a pay period within the period of any closure of the United States government, (ii) a copy of a furlough notification letter or essential employee status letter indicating the employee's status as nonessential, or (iii) a letter from a company under contract with the United States government issued and signed by an officer or owner of the company or by the company's human resources director stating that the employee's not receiving payment from the contractor is directly attributable to a closure of the United States government.

B. Notwithstanding any provision of law to the contrary, any tenant as defined in § 55.1-1200 who is a defendant in an unlawful detainer for nonpayment of rent pursuant to § 55.1-1245 for rent due after the commencement of a closure of the United States government seeking a judgment for the payment of money or possession of the premises shall be granted a 60-day continuance of such unlawful detainer action from the initial court date if the tenant appears on such court date and provides written proof that he 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 non-rent violation of the rental agreement or of the Code of Virginia.

C. Notwithstanding any provision of law to the contrary, any homeowner who, after the commencement of a closure of the United States government, defaults on a note that is secured by a one-family to four-family residential property located in the Commonwealth and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be granted a 30-day stay of such proceeding if the homeowner, within 90 days of such closure or 90 days following the end of a closure of the United States government, whichever is later, requests a stay and provides written proof to his lender that he 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.

D. Notwithstanding any provision of law to the contrary, any owner who rents a one-family to four-family residential dwelling unit located in the Commonwealth to a tenant as defined in § 55.1-1200 and who, after the commencement of a closure of the United States government, defaults on a note that is secured by such dwelling unit and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be granted a 30-day stay of such proceeding if the owner, within 90 days of such closure or 90 days following the end of a closure of the United States government, whichever is later, requests a stay and provides written proof to his lender that his tenant 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.

E. The provisions of this section shall not (i) apply in an instance where a separate, signed legal

agreement exists between a landlord and tenant or homeowner and mortgage holder to stay legal action or defer the filing of an unlawful detainer motion for nonpayment of rent or foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust for a term of 30 days or greater or (ii) affect any other terms of a valid rental agreement or note secured by a one-family to four-family residential property, mortgage, or deed of trust unrelated to nonpayment of rent or default of a mortgage caused by a closure of the United States government.

2. § 1. That the provisions of subsections B, C, and D of § 44-209, as created by this act, with respect to a continuance or stay of (i) an unlawful detainer action or (ii) a foreclosure proceeding on a mortgage or an execution of or sale under any deed of trust shall also be applicable to any tenant, homeowner, or owner, respectively, affected by the novel coronavirus (COVID-19) pandemic public health crisis during the period for which the Governor has declared a state of emergency (the Emergency). The provisions of subsection D of § 44-209, as created by this act, shall be expanded during the Emergency to include any owner who (a) rents a residential dwelling unit, regardless of its size or capacity, located in the Commonwealth, and (b) is affected by the Emergency.

§ 2. Homeowners and owners shall be excluded from the provisions of this enactment if they are subject to protection from foreclosure under the provisions of a federal, state, or local law, regulation, or action enacted in response to the COVID-19 pandemic or the Emergency.

§ 3. Any continuance or stay period provided by this enactment shall be tolled during the period of any judicial emergency declared pursuant to § 17.1-330 of the Code of Virginia due to the Emergency.

§ 4. The 60-day continuance provided by this enactment shall run concurrently with any period of eviction protection provided by any other state or federal law.

§ 5. For purposes of this enactment:

"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 continuance, as applicable, by providing written proof to a court or lender, as applicable, stating that he 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 (the Emergency) in response to the novel coronavirus (COVID-19) pandemic public health crisis, (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.

3. That an emergency exists and this act is in force from its passage.

4. That the provisions of the second enactment of this act shall expire 90 days following the end of a state of emergency declared by the Governor in response to the novel coronavirus (COVID-19) pandemic public health crisis.

VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1231

An Act to amend and reenact §§ 55.1-1204 and 55.1-1250 of the Code of Virginia, relating to landlord and tenant; charge for late payment of rent; restrictions.

[H 1420]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

**1. That §§ 55.1-1204 and 55.1-1250 of the Code of Virginia are amended and reenacted as follows:
§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.**

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

B. The landlord shall offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. Such written rental agreement shall be effective upon the date signed by the parties.

C. If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The provision of this chapter shall be applicable to the dwelling unit that is being rented;

2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of § 55.1-1253;

3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit not to exceed an amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

D. Except as provided in the written rental agreement, or as provided in subsection C if no written agreement is offered, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Except as provided in the written rental agreement, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

E. *A landlord shall not charge a tenant for late payment of rent unless such charge is provided for in the written rental agreement. No such late charge shall exceed the lesser of 10 percent of the periodic rent or 10 percent of the remaining balance due and owed by the tenant.*

F. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

~~F.~~ G. If the rental agreement contains any provision allowing the landlord to approve or disapprove a sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is evidence of his approval.

~~G.~~ H. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

~~H.~~ I. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid

unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

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

§ 55.1-1250. Landlord's acceptance of rent with reservation.

A. The landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55.1-1255, 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 subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, nothing in this section shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

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

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

D. In cases of unlawful detainer, a tenant may pay the landlord or 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, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. If such payment has not been made as of the return date for the unlawful detainer, the tenant 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 fees charges, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer to whom the writ of eviction has been delivered to be executed. Any payments made by the tenant shall be by cashier's check, certified check, or money order. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term of the rental agreement.

2. That an emergency exists and this act is in force from its passage.