I. Sources of the Law


1. Applies to all multi-family rental housing. §55-248.4

2. Applies to single family rental housing if the landlord owns & rents more than 2 units (change as of July 1, 2014). §55-248.5(A)(10)

3. Applies to motels, etc. if resided in for more than 90 days or subject to a written lease for more than 90 days. §§55-248.5(A)(4) & 55-248.5(D).
   a. If resided in for less than 90 days, owner must provide five day notice of non-payment before owner may exercise self-help eviction. §55-248.5(C)

4. Does not apply to [ §55-248.5(A) ]:
   a. Public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services. See, Maciel v. Commonwealth, 2011 Va.App.LEXIS 9 (2011).
   b. Contract of sale if the occupant is the purchaser.
   c. Fraternal or social organizations.
   d. An employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises, or an ex-employee whose occupancy continues less than 60 days.
   e. Condominiums.
   f. Occupancy in connection with business, commercial or agricultural purposes.
g. Federally subsidized housing subject to regulation by the Department of Housing and Urban Development where such regulation is inconsistent.

h. Occupancy by a tenant who pays no rent.


1. Applies to all manufactured home parks upon which 10 or more manufactured homes are located on a continual, non-recreational basis. §55-248.41

2. Contains 17 sections and incorporates 25 sections from the VRLTA which apply only insofar as they are not inconsistent with the MHLRA. §55-248.48

3. They change only those things which need to be changed, and make only the necessary changes (mutatis mutandis).

4. Room for creative advocacy to argue that the most favorable provision of either the MHLRA or the VRLTA should apply.


1. Applies to all residential housing (with exceptions noted below). Applies only to single family rental housing when term “dwelling unit” is used. §55-225.8(A)

2. Older law & not as comprehensive.

3. Applies to motels, etc. if resided in for more than 90 days or subject to a written lease for more than 90 days. §§55-225.8(A)(3) & 55-225.8(D)

   a. If resided in for less than 90 days, owner must provide five day notice of non-payment before owner may exercise self-help eviction. §55-225.8(C)

4. Does not apply to [ §55-225.8(A) ]:

   a. Public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services. See, Maciel v. Commonwealth, 2011 Va.App.LEXIS 9 (2011).

   b. Fraternal or social organizations.

   c. Condominiums.

   d. Occupancy in connection with business, commercial or agricultural purposes.

1. New owners acquiring property through foreclosure must honor existing leases. Tenants with term leases and more than 90 days remaining on their leases may not be evicted until the end of their lease terms.

2. Sole exception is that a new owner who seeks to occupy the unit as a primary residence may terminate the lease with at least 90 days’ notice.

3. In the case of leases with less than 90 days remaining in the term, month-to-month leases, and leases terminable at will, a minimum of 90 days’ notice also is required.

4. §8 Housing Voucher tenants have additional protections. When there is a §8 tenancy, the owner who is an immediate successor in interest at foreclosure takes subject to the §8 voucher lease and the §8 Housing Assistance Payments (HAP) contract.

5. Law protects only bona fide tenants. Former owner, spouse, parents, children not covered. Tenants paying substantially less than market rent or did not enter lease as the result of an arms-length transaction also not covered.


E. The Lease

1. Generally, may be written or oral (except must be written under the MHLRA).

2. Statute of Frauds requires lease for more than five years to be in writing. §11-1.

3. May be week-to-week, month-to-month, six months, one year, or any other length.

4. Lease automatically may terminate at the end of a set term. Landlord and tenant must enter a new lease before the end of the set term for the tenancy to continue after the set term.

5. Lease automatically may renew for another set term unless landlord or tenant gives written notice of non-renewal before the end of the set term. The lease usually says how much advance written notice must be given (e.g., 30 days, 60 days, or 90 days) before the end of the set term.

6. Lease automatically may renew on a month-to-month basis unless landlord or tenant gives written notice of non-renewal before the end of the set term. The
lease usually says how much advance written notice must be given (e.g., 30 days, 60 days, or 90 days) before the end of the set term.


1. Tenants in federally subsidized housing have important legal rights not enjoyed by tenants in private housing.

2. Landlords’ discretion concerning admission of tenants is limited to some degree.

3. Generally, subsidized housing tenants pay only 30% of their income for rent and utilities, and in all cases, the total rent landlords can charge is government regulated.

4. Usually, subsidized tenancies do not have time limited terms. As long as the tenant does not materially violate the lease or the law, the tenant is entitled to continued occupancy and may be evicted only for good cause.

5. Subsidized tenants often must be given specific notices of, and the opportunity to have, some type of pre-termination meeting with management or administrative hearing to contest the reasons for admission denial or subsidy termination.

6. See, Anderson v. Denny, 365 F.Supp 1254 (W.D. Va. 1973) – the substantive right to not be evicted from federally assisted housing on the mere expiration of a lease requires a tenant be afforded specific protections.

II. Tenant Protections Absent in All Laws

A. Late Fees

1. Essentially unregulated by all landlord-tenant laws.

2. The VRLTA [ §55-248.15:1(A)(i) ] allows a security deposit to be applied only to “reasonable” charges for late payment of rent specified in the rental agreement.

3. Most courts will not allow late fees unless in writing.

4. Most courts will not allow a per diem late fee.

5. Some courts have set a local limit on late fees (e.g., 10%). Sometimes applied to entire monthly rent and other times applied only to unpaid portion of monthly rent.

6. If a late fee can be characterized as a penalty unrelated to actual loss, it should be unenforceable at common law. See, Bethel v. Salem Home Improvement Co., 93

B. Early lease termination (other than active duty military, DV victims & other exceptions noted below)

1. Other than active duty military and domestic violence victims – discussed infra – unless the landlord has violated the lease, tenants have no legal right to end a lease early, even for compelling reasons such as age, disability, inability to continue to live independently or job relocation.

2. Lease may have rules about what a tenant must do to end early, e.g., 60 day advance written notice, pay rent for 60 day period and pay early termination penalty of two months’ rent. However, this is not required.

3. If tenant moves early anyway, tenant should give landlord a 30 day advance written notice and rent for the 30 day period. However, landlord can hold tenant legally responsible for rent for the remainder of the lease period.

4. After landlord knows tenant is moving, landlord has a duty to find another tenant and mitigate damages. Landlord may not be able to recover rent for the remainder of the lease period without mitigating. If another tenant is found, former tenant is not legally responsible for rent from that point in time onward.

III. Tenant Protections Present in All Laws

A. 30 day notice to vacate (for other than non-payment of rent): §§55-222, 55-248.31, 55-248.48

1. Unless non-payment of rent is an issue, or tenant has committed a willful or criminal act which is not remediable and which poses a threat to health or safety, a 30 day written notice to vacate is required to terminate a tenancy and to file an unlawful detainer after the 30 day period.

2. Less than 30 day written notice permitted if willful or criminal act poses a threat to health or safety. For definition of criminal, see Jernigan v. Commonwealth, 104 Va. 850, 52 S.E. 361 (1905). For definition of willful, see Wood v. Weaver, 121 Va. 250, 92 S.E. 1001 (1917); Barnes v. Moore, 199 Va. 227, 98 S.E.2d 683 (1957).

3. However, notice is not necessary from or to a tenant whose term is to end at a certain time, such as a one year, fixed term lease. See, Sweeney v. West Group, Inc., 259 Va. 776, 527 S.E.2d 787 (2000).
4. If landlord files unlawful detainer prior to expiration of notice period, landlord had no present right to possession at the time of commencement of action and case should be dismissed. See, Merryman v. Hoover, 107 Va. 485, 59 S.E. 483 (1907).

B. 5 day pay or quit notice (for non-payment of rent): §§55-225, 55-248.31, 55-248.48

1. If non-payment of rent is an issue, landlord must give tenant a written notice to either move or pay rent in 5 days.


3. Landlord may not refuse tender of rent or other payment. See, Young v. Ellis, 91 Va. 297, 21 S.E. 480 (1895); Boggs v. Duncan, 202 Va. 877, 121 S.E.2d 359 (1961); Whitt v. Godwin, 205 Va. 797, 139 S.E.2d 841 (1965).

4. Landlord may waive timely payment of rent or waive other lease breach. See, Thompson v. Artrip, 131 Va. 347, 108 S.E. 850 (1921).

C. Right of redemption in non-payment of rent case: §§55-243, 55-248.34(C), (D), (E), 55-248.46:1

1. Unlawful detainer lawsuit must stop if tenant pays all amounts owed: (i) all rent and arrears due as of the first court date, (ii) all late charges and attorney’s fees contracted for in a written lease, (iii) interest and (iv) court costs.


3. Payment must be made on or before the first court return date, and may be paid to the landlord, the landlord’s attorney or the court. This is a “redemption.”

4. If a local government or a non-profit entity has promised to pay the amounts, the tenant can give to the court their written commitment to pay the redemption amounts within 10 days after the first court dates. This is a “redemption tender.”

5. The redemption tender must be given to the court at the first court return date. The court must postpone the unlawful detainer for 10 days. If the 10th day falls on a Saturday, Sunday, or legal holiday, then the unlawful detainer is continued to the next business day.

6. On the next court date, if the landlord has received all of the money promised in the redemption tender, the court must dismiss the case. If the landlord has not
received all of the money promised in the redemption tender, the court must grant
the landlord a judgment for immediate possession and for all amounts due.

7. A tenant may prevent eviction only once every 12 months that the tenant lives in
the same place, either by paying a redemption or by offering a redemption tender
and then having the redemption paid.

D. Rent escrow may be required in unlawful detainer: §§55-225.14, 55-248.25:1, 55-
248.48

1. If landlord files unlawful detainer and tenant seeks continuance or contested trial,
court shall, upon request of landlord, order tenant to pay future rent into court.

2. If tenant asserts good faith defense and court so finds, court shall not require rent
to be escrowed.

3. If court finds tenant has not asserted good faith defense, tenant shall be required
to pay an amount determined by the court to be proper into court escrow. Court
may grant one week for tenant to make payment, and if payment not made, court
shall, upon request of landlord, enter judgment for landlord.

4. If landlord requests continuance, court shall not order rent to be escrowed.


1. Landlord may not cut off utilities, lock the tenant out of the rental unit, or evict
the tenant without giving notice and going to court. A tenant does not have to
move out just because the landlord tells the tenant to leave and takes out an
unlawful detainer. The landlord must wait until a court order is issued.

2. Five steps of an eviction:

   a. Step One: written notice from landlord to tenant.

      i) Five day pay-or-quit for non-payment of rent.

      ii) Thirty day notice to vacate in almost other cases.

         a) If tenant can fix the problem, 21/30 day notice of remediable
            breach.

         b) If tenant can’t fix the problem (or if prior remediable breach
            notice), 30 day notice of non-remediable breach.

      iii) Less than thirty day notice if tenant commits criminal or willful act that is
           a threat to health or safety.
b. Step Two: unlawful detainer filed after notice period has ended.

c. Step Three: landlord goes to court & gets judgment of possession.

d. Step Four: landlord gets Writ of Possession.

i) If tenant does not appear in court and issue is non-payment of rent, Writ may be issued immediately.

ii) If tenant appears in court, Writ cannot be issued until 11 (or more) days later.

e. Step Five: Writ is served, Sheriff waits at least 72 hours, returns to evict & evicts only on date stated on Writ. See, Opinion of Virginia Attorney General (November 10, 1997).

3. These steps usually take more than 2 months from the day the tenant gets a notice to move out.


1. If a landlord willfully cuts off utilities, locks the tenant out of the rental unit, or evicts the tenant without giving notice and going to court, the tenant has a quick remedy.

2. The tenant should go to General District Court and file a Tenant’s Petition for Relief from Unlawful Exclusion (Form DC-431).

3. Tenant may ask for recovery of possession, resumption of interrupted utility, termination of rental agreement, actual damages and reasonable attorney fees.

G. Landlord’s obligations: §§55-225.3, 55-248.13, 55-248.43

1. Follow building and housing codes affecting health and safety.

2. Make all repairs needed to keep the place fit and habitable.

3. Keep common areas clean and safe.

4. Keep in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances that the landlord supplies or must supply.

5. Maintain premises to prevent accumulation of moisture and growth of mold.
6. Provide and maintain receptacles for garbage, and provide for removal of same.

7. Supply water, hot water, air conditioning if provided, and heat in season; unless the tenant alone controls the heat, air conditioning, or hot water, or unless provided directly by a utility company to the tenant on a separate meter.

8. Parties may agree in writing that tenant performs duties 3, 6 and 7, only if done in good faith and not to evade landlord obligations.


H. Tenant’s obligations: §§55-225.4, 55-248.16, 55-248.44

1. Comply with tenant duties imposed by building and housing codes affecting health and safety.

2. Keep rented space and plumbing as clean and safe as conditions permit.

3. Keep premises free from insects & pests and promptly notify landlord of insects or pests (only in VRLTA & MHLTA, not in Virginia Landlord & Tenant Law).

4. Use all utilities and appliances reasonably, and get rid of trash.

5. Not destroy or mess up the property, or allow anyone else to.

6. Not disturb neighbors, or allow anyone else to.

7. Use reasonable efforts to prevent accumulation of moisture and growth of mold.

8. Not paint without landlord’s prior written approval if premises built prior to 1978 and lease requires prior written approval.

9. Be responsible for the conduct of persons on the premises with tenant’s consent, whether known by the tenant or not.

10. Follow the lease and reasonable rules of the landlord.

I. Tenant’s Assertion (Rent Escrow Case): §§55-225.12, 55-248.27, 55-248.48

1. To get repairs, tenants must do four things:
a. Be current in rent and stay current.

b. Give written notice to landlord (or have someone else do so).

c. Wait a reasonable period of time. Court has discretion to determine what is reasonable. Rebuttable presumption that more than 30 days is unreasonable.

d. If repairs not made after reasonable time, take the written notice & the next month’s rent to General District Court & file a Tenant’s Assertion (or rent escrow case). Rent must be paid within five days of the due date.

2. Tenant must assert a condition which constitutes landlord’s material non-compliance with lease or the provisions of law.

3. Tenant may file assertion in General District Court and ask for relief as set forth below.

4. Prior to granting relief, tenant shall show to court:
   a. Prior to tenant’s assertion, landlord was served written notice by tenant or notified by a violation or condemnation notice, and landlord failed to remedy after reasonable opportunity. (Rebuttable presumption that more than 30 days is unreasonable.)
   b. Tenant has paid into court the rent called for under the lease, within 5 days of due date.
   c. Landlord may answer assertion by showing conditions do not exist, conditions have been remedied, conditions have been caused by tenant, or tenant unreasonably refused entry to permit correction of conditions.

5. Court may order as follows:
   a. Terminate lease.
   b. Order money in escrow to landlord or tenant.
   c. Order escrow continued until conditions remedied.
   d. Order rent abatement.
   e. Order money disbursed to tenant or to landlord or to contractor in order to make repairs.
f. Refer matter to proper state or municipal agency for investigation & report, and grant continuance of action. When continuance granted, tenant shall pay future rent into court during period of continuance.

g. Order disbursement to pay mortgage.

h. Order disbursement to satisfy mechanic’s or materialman’s lien.

i. If condition not remedied within six months of establishment of escrow, court shall award all moneys to tenant.

6. Initial hearing shall be held within 15 days after service on landlord, except court shall order earlier hearing where emergency conditions are alleged to exist.

7. No rent withholding in Virginia.


9. Tenant cannot just move out without written notice.

J. Tenant may give landlord 21/30 or 30 day notice: §§55-225.13, 55-248.21, 55-248.48

1. If non-compliance by landlord which is remediable, tenant may serve written 21/30 day notice.

2. If non-compliance by landlord which is non-remediable, tenant may serve written 30 day notice.

3. If landlord served prior 21/30 day notice for breach which was remedied and landlord commits subsequent breach of like nature, tenant may serve written 30 day notice.

4. If breach remediable by repairs and landlord remedies prior to date in notice, tenant may not terminate.

5. Tenant may not terminate for condition caused by tenant, tenant’s family, or person on premises with consent of tenant.

6. Tenant may recover damages, injunctive relief and reasonable attorney’s fees.

7. If lease terminated due to landlord’s non-compliance, landlord shall return security deposit in accordance with §55-248.15:1.
8. *See, Genesis Props. v. Wright, 59 Va.Cir. 256 (City of Richmond - 2002)* – where tenants complied with the termination provisions of the VRLTA, the landlord could not recover the rents.

**K. Early lease termination by military personnel: §§55-248.21:1, 55-248.48**

1. Active duty military may terminate lease early if:
   
   a. Received permanent change of station orders to depart 35 miles or more from dwelling,
   
   b. Received temporary change of station orders in excess of 3 months to depart 35 miles or more from dwelling,
   
   c. Is discharged or released from active duty, or
   
   d. Is ordered to report to government-supplied quarters resulting in loss of basic allowance for quarters.

2. Tenant must serve written notice of termination more than 30 days and no less than 60 days in advance. Tenant also must furnish landlord a copy of the transfer orders.

3. Tenant responsible for rent through the effective date of termination.

4. Landlord may not charge any liquidated damages.

**L. Early lease termination for victims of family abuse: §§55-225.16, 55-248.21:2, 55-248.48**

1. If tenant is a victim of family abuse and has obtained a Protective Order, or the perpetrator has been convicted of any crime of sexual assault, tenant may terminate the lease.

2. Tenant must serve written notice of terminate not less than 30 days in advance. Tenant also must furnish landlord a copy of the Protective Order or the criminal conviction order.

3. Tenant responsible for rent through the effective date of termination.

4. Landlord may not charge any liquidated damages.

5. Victim’s obligations continue through the effective date of termination. Co-tenants on the lease with victim remain responsible for the rent for the balance of the lease. If perpetrator is the sole remaining tenant, landlord may terminate lease and collect actual damages from perpetrator.
M. Rent abatement/reduction if property destroyed: §§55-226, 55-248.24, 55-248.48

1. If dwelling unit or premises damaged or destroyed by fire or casualty, either landlord or tenant may terminate rental agreement.

2. Tenant may terminate by vacating and within 14 days serving a written termination notice on landlord, in which case lease terminates as of date of vacating.

3. Landlord may terminate by providing 30 days advance notice, in which case lease terminates as of the expiration of the notice period.

4. Law does not impose upon the landlord any positive duty to rebuild. See, National Hotels, Inc. v. Howard Johnson, Inc., 373 F.2d 375 (4th Cir. 1967).

5. For statute to apply, the damage or destruction must have occurred without fault or negligence of the tenant. See, Monterey Corp. v. Hart, 216 Va. 843, 224 S.ER.2d 142 (1976).

6. Burden of proof is of the tenant to show that any alleged damage was not caused by his fault or negligence. See, Warehouse Distribs., Inc. v. Prudential Storage & Van Corp., 208 Va. 784, 161 S.E.2d 86 (1968).

N. Landlord to provide written notice of abandonment: §§55-224, 55-248.33, 55-248.38:1, 55-248.48

1. If lease requires tenant to give notice to landlord of absence in excess of 7 days and tenant fails to do so, landlord may recover actual damages.

2. During any absence in excess of 7 days, landlord may enter at times reasonably necessary to protect landlord’s possessions and property.

3. Lease terminated as of date of abandonment by tenant.

4. If landlord cannot determine whether tenant has abandoned premises, landlord shall serve written notice on tenant requiring tenant to give landlord written notice within 7 days of intent to remain in occupancy.

5. If tenant gives such notice within 7 days, or landlord determines that tenant remains in occupancy, landlord shall not treat premises as abandoned.

6. If tenant does not give such notice within 7 days, rebuttable presumption that premises abandoned, and landlord shall mitigate damages as per §55-248.35.

IV. **Tenant Protections Present in Landlord and Tenant Law & VRLTA (not in MHLRA)**

A. **Access after tenant granted exclusive possession: §55-225.5, 55-248.18:1**

   1. Tenant granted exclusive possession of the premises pursuant to a Permanent Protective Order or a *pendent lite* divorce order may provide landlord with a copy of that order and request the landlord install a new lock or permit the tenant to do so.

   2. Upon termination of tenancy, tenant must pay landlord reasonable costs incurred by landlord.

   3. Landlord shall not give copies of keys to any person excluded by such order.

B. ** Inspection of dwelling unit at move-in: §55-225.6, 55-248.11:1**

   1. Within five days after the tenant moves into the property, landlord must give tenant a written report listing all damages existing at the time the tenant moves in. The tenant must submit any changes, *in writing*, within five days, otherwise, it is deemed correct.

   2. Landlord also may allow tenant to prepare a written report listing all damages existing at the time the tenant moves in. In this case, the landlord must submit any changes, *in writing*, within five days, otherwise, it is deemed correct.

   3. In addition, parties may prepare the written report together, with both parties signing and keeping a copy, in which case it is deemed correct.

C. **Disclosure of mold in dwelling units: §55-225.7, 55-248.11:2**

   1. As part of written report of move-in inspection landlord shall disclose whether there is visible evidence of mold.

   2. If there is visible evidence of mold, tenant may terminate tenancy or remain in possession.

   3. If tenant remains in possession, landlord shall remediate within five business days and re-inspect to confirm there is no visible evidence of mold and provide new report.
D. Relocation of tenant for mold remediation: §55-225.9, 55-248.18:2

1. Landlord may require tenant to temporarily vacate for no more than 30 days so mold remediation can be performed. Landlord must provide comparable dwelling unit or hotel room, at no cost to tenant.

2. Tenant continues to be responsible to pay rent.

3. Landlord shall pay all costs of mold remediation, unless tenant failed to use reasonable efforts to prevent accumulation of moisture and growth of mold.

E. Disclosure of defective drywall: §55-225.11, 55-248.12:2

1. If landlord has actual knowledge of defective drywall, must disclose to tenant prior to move-in.

2. Tenant not provided disclosure may terminate lease within 60 days of discovery of defective drywall by providing 15 - 30 days advance written notice.

F. Disclosure property was used to make methamphetamine: §55-225.17, 55-248.12:3 (effective as of July 1, 2014)

1. If landlord has actual knowledge that dwelling unit was used to make methamphetamine, must disclose to tenant prior to move-in.

2. Tenant not provided disclosure may terminate lease within 60 days of discovery that dwelling unit was used to make methamphetamine by providing 15 - 30 days advance written notice.

G. Disclosure of property near military air installation: §55-248.12:1

1. Landlord of a property in any locality in which a military air installation is located must disclose that fact to tenant prior to move-in.

2. Tenant not provided disclosure may terminate lease during first 30 days of lease by providing 15 - 30 days advance written notice.

H. Written rent receipt required upon tenant request: §55-225.15, 55-248.7(H)

1. Upon request from the tenant, landlord shall provide tenant with a written receipt whenever rent paid by cash or money order.

V. Tenant Protections Present in VRLTA & MHLRA (not in Landlord and Tenant Law)

A. Unsigned lease effective if rent accepted w/out reservation: §§55-248.8, 55-248.48
1. If landlord does not sign & deliver a written lease, signed & delivered by tenant, acceptance of rent without reservation gives lease same effect as if it had been signed by landlord.

2. If tenant does not sign & deliver a written lease, signed & delivered by landlord, acceptance of possession or payment of rent without reservation gives lease same effect as if it had been signed by tenant.

B. Prohibited provisions in rental agreements: §§55-248.9, 55-248.48


2. Forgoing rights & remedies pertaining to 120 days advance written notice for conversion or rehabilitation.

3. Confession of judgment.

4. Paying landlord’s attorney’s fees, except as authorized by VRLTA or MHLRA.

5. Limitation of landlord’s liability.

6. Agreeing to firearm restriction or prohibition as a tenant in public housing.

7. Security deposit in excess of two months’ rent.

8. If landlord brings an action to enforce prohibited provision, tenant may recover actual damages and reasonable attorney’s fees.

C. Disclosure of authorized agents: §§55-248.12, 55-248.48

1. Landlord or person authorized to act for owner shall disclose to tenant, in writing at or before start of tenancy, the name & address of owner, any other person authorized to act for owner, and any person authorized to manage the premises.

2. In the event of sale of premises, landlord shall notify tenant of sale and name, address & phone of the purchaser.

3. If there is a plan to convert or demolish rental property that will result in tenant displacement, landlord must disclose that in writing to any prospective tenant.

D. Limitation on security deposits; move out inspection: §§55-248.15:1, 55-248.48

1. Limited to two months’ rent.
2. May be applied solely to rent, reasonable late fees set forth in lease, damages beyond reasonable wear & tear, other damages or charges provided in the lease.

3. Landlord has 45 days after move out to refund security deposit and/or itemized list of deductions, damages & charges.

4. Landlord make deduct from security deposit during course of tenancy with notice within 30 days of determination of deduction.

5. If damages exceed amount of security deposit and require third party contractor, landlord shall give written notice of that fact within the 45 day period, and shall have an additional 15 days to provide itemized list of deductions, damages & charges.

6. This section does not preclude landlord or tenant from recovering other damages to which they may be entitled under this chapter.

7. Holder of the landlord’s interest in the premises at the time of termination of tenancy, regardless of how acquired or transferred, is bound by this section and required to return any security deposit received by original landlord. See also, Code of Virginia §55-507.

8. Landlord required to pay interest on security deposit held for more than 13 months.

9. Landlord shall maintain and itemize records for each tenant of all deductions.

10. Upon request by landlord to a tenant to vacate, or within 5 days after receipt of tenant’s intent to vacate, landlord shall make reasonable efforts to advise tenant of tenant’s right to be present at move out inspection.

11. If tenant desire to be present at move out inspection, tenant shall advise landlord in writing, and landlord shall notify tenant of date & time of inspection, which must be within 72 hours of delivery of possession. Upon completion of such inspection, landlord shall furnish tenant an itemized list of damages known to exist at inspection.

12. If landlord willfully fails to comply with section, court shall order return of security deposit, interest, actual damages and attorney’s fee, minus a credit for unpaid rent.

13. See, Hughes v. Bransfield, 84 Va.Cir. 214 (Fairfax Co. – 1/11/12) – landlord’s demurrer overruled because tenant stated a claim for return of security deposit.
E. Landlord’s rules & regulations must be reasonable: §§55-248.17, 55-248.48

1. To be enforceable, a landlord’s rule must:
   a. Promote convenience, safety or welfare of tenants, preserve landlord’s property from abuse, or make a fair distribution of services & facilities.
   b. Be reasonably related to the purpose for which it is adopted.
   c. Apply to all tenants in a fair manner.
   d. Be sufficiently explicit to fairly inform tenant what he/she must & must not do.
   e. Not be for purpose of evading landlord’s obligations.
   f. Be provided to tenant at time tenant enters into lease.

2. Rule or regulation adopted, changed or provided to tenant after tenant enters into leave is enforceable only if it does not substantially modify the bargain or the tenant consent to it in writing.

3. Violation of reasonable rules and regulations are a breach of the lease

F. Tenant remedy if landlord fails to deliver possession: §§55-248.22, 55-248.48

1. If landlord willfully fails to deliver possession, rent abates until possession delivered.

2. Tenant may terminate lease upon at least 5 day advance written notice.

3. Upon termination, landlord shall returned all pre-paid rent and security deposit.

4. Tenant also may demand performance of lease by landlord, and may file action for possession.

G. Tenant remedy if landlord fails to provide utilities or essential services: §§55-248.23, 55-248.48

1. If contrary to lease or the provisions of the VRLTA or MHLRA, landlord fails to supply heat, running water, hot water, electricity, gas or other essential service, tenant must serve written notice and after reasonable time may:
   a. Recover damages based on diminution of fair rental value, or
b. Procure reasonable substitute housing, in which case tenant is excused from paying rent during landlord’s non-compliance.

2. Tenant may proceed under this section or §55-248.21.

3. Rights of tenant do not arise until tenant gives written notice.

4. No rights arise if condition caused by tenant, tenant’s family, or person on premises with consent of tenant.

H. LL non-compliance as defense to non-payment of rent case: §§55-248.25, 55-248.48

1. In action for possession due to non-payment of rent, tenant may assert as a defense a condition which constitutes material non-compliance with lease by landlord, provided:

   a. Prior to landlord’s action, landlord was served written notice by tenant or notified by a violation or condemnation notice, and landlord failed to remedy after reasonable opportunity. (Rebuttable presumption that more than 30 days is unreasonable.)

   b. Tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid.

2. Landlord may answer defense by showing conditions do not exist, conditions have been remedied, conditions have been caused by tenant, or tenant unreasonably refused entry to permit correction of conditions.

3. Court may order as follows:

   a. Rent set-off

   b. Terminate lease

   c. Refer matter to proper state or municipal agency for investigation & report, and grant continuance of action. When continuance granted, tenant shall pay future rent into court during period of continuance.

4. If tenant raised defense in bad faith, court may impose on the tenant the landlord’s costs, attorney’s fees, and costs of repair.

I. Landlord to give tenant 21/30 or 30 day notice: §§55-248.31, 55-248.48

1. If non-compliance by tenant which is remediable, landlord may serve written 21/30 day notice.
2. If non-compliance by tenant which is non-remediable, landlord may serve written 30 day notice.

3. If tenant served prior 21/30 day notice for breach which was remedied and tenant commits subsequent breach of like nature, landlord may serve written 30 day notice.

4. If breach remediable by repairs and tenant remedies prior to date in notice, landlord may not terminate.

5. If tenant commits a criminal or willful act, not remediable, and which poses a threat to health or safety, landlord may terminate lease immediately and proceed with unlawful detainer.

6. If rent unpaid after 5 day pay or quit notice, landlord may terminate lease and proceed with unlawful detainer.

7. Landlord entitled to reasonable attorney’s fees unless tenant proves by a preponderance of evidence that failure to pay rent or vacate was reasonable.

J. Tenant not to be evicted if victim of family abuse: §§55-248.31(D), 55-248.48

1. If tenant is a victim of family abuse and perpetrator is barred either by landlord notice or by protective order, lease shall not terminate solely due to family abuse against tenant, provided:
   a. Tenant provides to landlord written documentation as victim of family abuse and of exclusion of perpetrator within 21 days.
   b. Tenant notifies landlord of perpetrator’s return within 24 hours, unless tenant had no knowledge or notice within 24 hours was not possible, in which case notice shall be provided within 7 days.

2. If this subsection does not apply, tenant responsible for the acts of co-tenants, authorized occupants, guests and invitees on the premises with tenant’s consent, whether known by the tenant or not.

K. Limitation on landlord’s barring tenant’s guest/invitee: §§55-248.31:01, 55-248.48

1. Tenant’s guest or invitee may be barred by written notice served on both tenant and guest or invitee for conduct on the landlord’s property which violates the lease or the law and which describes the conduct which is the basis of the action.

2. Landlord also may apply for a warrant for trespass.
3. Tenant may file a Tenant’s Assertion to review the landlord’s action.

**L. Limitation on acceptance of pre-judgment rent: §§55-248.34:1(A), 55-248.46:1**

1. Unless landlord gives written notice to tenant of acceptance of rent with reservation, within five business days of receipt of the rent, acceptance of periodic rent payment, with knowledge of noncompliance by tenant, constitutes a waiver of the right to terminate the rental agreement.

2. A pre-judgment reservation notice may be given either in the initial five day pay-or-quit notice or within 5 business days of receipt of each pre-judgment payment.

3. Notwithstanding that, even if landlord has given written notice to tenant of acceptance of rent with reservation, tenant still has right of redemption and right of redemption tender, as provided in Code of Virginia §55-243.

4. Tenant may do this once in every 12 month period in each separate place the where the tenant is renting. The second time the tenant tries to redeem within that 12 month period, landlord may accept it all and get a judgment of possession only.

**M. Prohibition on retaliatory conduct or eviction: §§55-248.39, 55-248.50**

1. Landlord shall not selectively increase rent or decrease services, or bring or threaten to bring an action for possession after landlord has knowledge that:
   
   a. Tenant complained to a government agency about a building or housing code.

   b. Tenant complained to or sued landlord about violation of VRLTA or MHLRA.

   c. Tenant organized or joined a tenants’ organization.

   d. Tenant has testified in a court proceeding against landlord.

2. Landlord has knowledge if landlord has actual knowledge, received a notice, or from all facts & circumstances, has reason to know.

3. Landlord may terminate lease and bring action for possession if violation of building or housing code caused by tenant, tenant is in default in rent, or tenant breached lease in a manner materially affecting health & safety.

**N. Action for injunction and/or damages: §§55-248.40, 55-248.48**
1. Any person adversely affected by act or omission prohibited by VRLTA or MHLRA may file Circuit Court action for injunction and damages.

VI. Tenant Protections Present only in Landlord and Tenant Law

A. Notice to tenant in event of foreclosure: §55-225.10

1. Landlord shall give written notice to tenant or prospective tenant that landlord has received notice of mortgage default, mortgage acceleration or foreclosure sale, within 5 business days after receipt.

2. If landlord fails to provide such notice, tenant may terminate lease by providing at least 5 business days advance written notice.

B. Utility sub-metering, or ratio utility billing system, required: §55-226.2

1. Energy sub-metering equipment, energy allocation equipment, water & sewer sub-metering equipment – or a ratio utility billing system – must be used in a building or campground.

2. A ratio utility billing system is a method of calculating a resident’s utility bill based on occupancy, square footage, number of beds, or some combination of factors.

3. Method must clearly be stated in the lease.

4. Service charges are limited to actual costs and must be stated in the lease. Late fees are limited to $5.00.

5. Landlord must maintain records concerning the energy sub-metering equipment, energy allocation equipment and water & sewer sub-metering equipment – or the ratio utility billing system.

VII. Tenant Protections Present only in VRLTA

A. Application deposits refunded if unit not rented: §55-248.6:1

1. Landlord may require refundable application deposit, in addition to a nonrefundable application fee.

2. If applicant fails to rent the unit, landlord shall refund application deposit, less actual expense and damages, within 20 days (or within 10 days, if paid by cash, certified check, cashier’s check or money order).

3. If landlord fails to comply, tenant may recover application deposit wrongfully withheld and reasonable attorney fees.
B. Terms and conditions of rental agreements: §55-248.7

1. May include in a rental agreement terms and conditions not prohibited by VRLTA, including rent, late fees, lease term, automatic lease renewal, and notice of intent to vacate or terminate the rental agreement.

2. In the absence of a rental agreement, the tenant shall pay fair rental value for rent.

3. Unless otherwise agreed, rent payable at the beginning of any term of one month or less, and otherwise in equal installments, at the beginning of each month.

4. If landlord receives from a tenant a written request for an accounting of charges and payments, landlord shall – within 10 business days of receipt – provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter.

5. Tenancy shall be week to week in case of a tenant who pays weekly rent, and in all other cases month to month.

6. If the lease says landlord may approve or disapprove a sublessee or assignee of the tenant, landlord shall within 10 business days approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of approval.

7. A copy of any written lease signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement.

8. 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 lease and (ii) both parties consent in writing to the change.

C. If pre-paid rent, landlord must place in escrow: §55-248.7:1

1. A tenant may offer and a landlord may accept prepaid rent.

2. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due.

3. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant.
D. Landlord may require or obtain damage/renter’s insurance for tenant: §55-248.7:2

1. Landlord may require that a tenant have damage insurance, but cannot require tenant to pay both a security deposit and the cost of damage insurance premiums if the total exceeds two months’ rent.

2. Landlord may require that a tenant have renter’s insurance, but cannot require tenant to pay both a security deposit and the cost of renter’s insurance premiums if the total exceeds two months’ rent and the premiums must be paid prior to the start of the tenancy.

3. Landlord may obtain either insurance for tenant and recover actual costs from tenant.

E. Confidentiality of tenant records: §55-248.9:1

1. Landlord may release information about a tenant if tenant gives written consent.

2. If tenant has not given written consent, landlord may not release information unless it is:
   a. A matter of public record.
   b. A summary of the tenant’s rent payment record.
   d. A remediable breach notice that was not remedied.
   e. A non-remediable breach notice.
   f. Requested by law enforcement.
   g. Requested by subpoena.
   h. Requested by a contract purchaser of the landlord’s property.
   i. Provided in an emergency.

F. Landlord & tenant remedies for abuse of access: §55-248.10:1

1. If tenant refuses to allow lawful access, landlord may obtain injunctive relief to compel access, or terminate the rental agreement and seek actual damages & reasonable attorney’s fees.

2. If landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect
of unreasonably harassing the tenant, tenant may obtain injunction, or terminate the rental agreement and seek actual damages & reasonable attorney’s fees.

G. Locality may require LL to provide locks & peepholes: §55-248.13:1

1. Locality may require landlord who rents 5 or more dwelling units to provide dead-bolt locks, peepholes, sliding glass door locks and window locks.

H. Landlord must provide access to cable & satellite TV: §55-248.13:2

1. Landlord cannot demand payment from provider of cable, satellite or other television facilities.

2. Landlord cannot demand payment from tenant for cable, satellite or other television facilities, unless landlord is the provider.

I. Landlord must provide notice of insecticide/pesticide use: §55-248.13:3

1. Landlord must provide at least 48 hours advance notice of insecticide or pesticide use. If tenant requests insecticide or pesticide, 48 hour notice not required.

2. Landlord must post in common areas at least 48 hours advance notice of insecticide or pesticide use.

J. Limitation on landlord’s access to premises: §55-248.18

1. Tenant cannot unreasonably withhold consent to the landlord to enter into the rental unit.

2. Landlord may enter the rental unit without tenant’s consent only in an emergency.

3. Landlord may not abuse the right of access or use it to harass the tenant.

4. Except in an emergency, landlord must give tenant notice of intent to enter and enter only at reasonable times.

5. Unless impractical, landlord must give the tenant at least 24 hours advance notice.

K. Limitation on acceptance of post-judgment rent: §55-248.34:1(B)

1. A post-judgment reservation notice must be given within 5 business days of receipt of each post-judgment payment.

2. Notice must state that payment is accepted with reservation and does not constitute a waiver of the landlord’s right to evict the tenant from the dwelling unit.
3. If a landlord enters into a new written lease with the tenant prior to eviction, an order of possession obtained prior to the entry of such new lease is not enforceable.

4. See also, Mullins v. Sturgill, 192 Va. 653, 664, 66 S.E.2d 483, 490 (1951) – “Generally speaking, any recognition by a lessor of a tenancy as subsisting after a right of entry has accrued, where the lessor has notice of the forfeiture will have the effect of a waiver of the landlord's right to a forfeiture of the leasehold. Slight acts on the part of a lessor may be sufficient. Indeed, it has been ruled that any act on the part of the lessor, by word or deed, with knowledge of what has been done, which signifies his intention to affirm the lease, is conclusive evidence of a waiver of the forfeiture. 32 Am.Jur. Landlord and Tenant, Sec. 882, p. 747.”

5. If the dwelling unit is federally subsidized, a post-judgment reservation notice given to the tenant also accepts the federal rent with reservation.

6. To successfully quash a Writ of Possession, most courts require full payment of the judgment, court costs and attorney’s fees. However, even one payment accepted without a proper written notice accepting rent with reservation usually is sufficient to quash the Writ of Possession.

VIII. Tenant Protections Present only in MHLRA

A. Written agreement required: §55-248.42

1. Written agreement, signed and dated by all parties, required prior to start of tenancy.

2. Landlord must give tenant signed and dated lease and a copy of the MHLRA or a clear & simple explanation of the MHLRA’s duties, within 7 days after tenant signs.


4. Written lease cannot contravene MHLRA and cannot prohibit tenant from selling manufactured home.

5. Notice of change in lease constitutes a notice to vacate, and such notice shall be given in accordance with lease and law.

6. Written lease may only require tenant pay rent, utility charges, and reasonable incidental charges for landlord supplied services or facilities.
7. If security interest, written lease must contain name of party with security interest in manufactured home and name of dealer, and require tenant to notify landlord within 10 days of any change.

B. **Offer of one year lease required: §55-248.42:1**

1. All current and prospective year-round residents must be offered one year lease under same terms and conditions as shorter term leases (except rent discounts may be offered for shorter leases).

2. Upon expiration of lease, automatic renewal under same terms and conditions unless at least 60 days advance written notice provided.

3. If automatic renewal by year-round resident, no increase in or additional security deposit.

C. **Demands and charges prohibited: §55-248.45**

1. Landlord may not charge nor collect:
   a. Entrance fee.
   b. Commission on sale of manufactured home, unless tenant expressly employs landlord to do so.
   c. Fees for improvements on exterior of home, unless tenant expressly employs landlord to do so.
   d. Fees from any provider of cable TV, cable modem, satellite TV or any other TV service in exchange for granting service provider mere access to landlord’s tenants.
   e. An exit fee for moving a home from a park.

2. Tenant’s guests shall have free access to the home site without charge

3. Manufactured home owner shall have free choice of vendors from whom to buy home or goods and services, except landlord may prescribe reasonable rules for style, size or quality of the home

D. **Sixty day notice for termination of tenancy: §55-248.46**

1. Either party may terminate a rental agreement for a term of 60 days or longer by giving 60 days advance written notice; however, rental agreement may provide a longer period.
2. Where a landlord and a seller of a manufactured home have in common: (i) one or more owners, (ii) immediate family members, or (iii) officers or directors, the rental agreement shall be renewed except for reasons authorized under Code of Virginia §55-248.50:1.

3. Landlord may not willfully interrupt utilities or essential services, remove the home from the lot, or any other willful self-help measure.

4. If termination due to rehabilitation or change in the use of all or part of the park, 180 days advance written notice required.

E. Sale or lease of manufactured home by owner: §55-248.47

1. Landlord shall not unreasonably restrict sale or rental of home in the park by tenant.

2. Prior to selling or renting tenant must give notice to landlord of prospective buyer or renter if prospective buyer or renter intends to occupy home in that park.

3. Landlord has burden to prove restriction on sale or rental is reasonable.

F. Power of localities over manufactured home parks: §55-248.49

1. Counties, cities and towns may adopt ordinances to enforce obligations imposed on landlords by §55-248.43.

G. Limitations on grounds for eviction of tenant: §55-248.50:1

1. A manufactured home park owner or operator may only evict a tenant for:
   a. Nonpayment of rent.
   b. Violation of building or housing code caused by lack of reasonable care by tenant, member of household, or person on premises with tenant’s consent.
   c. Violation of law detrimental to health, safety and welfare of other residents in park.
   d. Violation of rule or lease provision materially affecting health, safety and welfare of tenant or others.
   e. Two or more violations of any rule or lease provision within a 6 month period.

H. Right to sell home upon eviction: §55-248.50:2
1. Tenant evicted from park has 90 days after judgment within which to sell home or remove home from park.

2. Tenant responsible for paying rent and for maintenance of home between date of eviction and date of sale or removal of home from park.

3. Right to keep home in park conditioned upon payment of all rent accrued prior to judgment and prospective monthly rent as it becomes due.

4. During such period, secured party liable for charges as per §55-248.44:1.

5. Park has a lien on the home to the extent rent not paid.

6. Sale of home subject to any security interest, and to lien granted to park, in that order.

I. Penalties for violation of MHLRA: §55-248.51

1. If landlord acts in willful violation of §55-248.43 (landlord’s obligations), 55-248.45 (demands & charges prohibited), 55-248.47 (sale or lease of manufactured home by owner), or 55-248.50 (retaliation), or if landlord fails to provide a written dated lease, the tenant is entitled to recover an amount equal to one month’s rent or actual damages, whichever is greater, and reasonable attorney’s fees.
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VIRGINIA RESIDENTIAL LANDLORD-TENANT LAW (a comprehensive overview)

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October 2015
OUTLINE OF THIS TRAINING

I. Sources of the Law
II. Eviction
III. Non-payment of rent
IV. Repairs
V. Security deposits
VI. Leases
VII. Early termination of leases
VIII. Late fees
IX. Landlord access
X. Landlord barring of guests/visitors
XI. Landlord release of information
I. SOURCES OF THE LAW

VRLTA:
- All multi-family rental housing
- Single family rental housing if LL owns & rents more than 2 units (change as of July 1, 2014)
- Motels, if resided in for more than 90 days or subject to written lease for more than 90 days
- If resided in for less than 90 days, motel must provide five day notice of non-payment before self-help eviction
- Not apply to institutions, employees, zero rent tenants
I. SOURCES OF THE LAW

MHLRA:
- All manufactured home parks upon which 10 or more manufactured homes are located on a continual, non-recreational basis
- Contains 17 sections and incorporates 25 sections from the VRLTA which apply only insofar as they are not inconsistent with the MHLRA
- Most favorable provision of either the MHLRA or the VRLTA should apply.
I. SOURCES OF THE LAW

Virginia Landlord and Tenant Law:

- All residential housing (with exceptions)
- Applies to single family rental housing when term “dwelling unit” is used
- Older law & not as comprehensive
- Motels, if resided in for more than 90 days or subject to written lease for more than 90 days
- If resided in for less than 90 days, motel must provide five day notice of non-payment before self-help eviction
- Not apply to institutions
The **Lease:**
- May be written or oral (must be written under the MHLRA)
- Statute of Frauds requires lease for more than five years to be in writing
- May be week-to-week, month-to-month, six months, one year, or any other length
- Lease automatically may terminate at the end of a set term or renew in absence of advance written notice of non-renewal
I. SOURCES OF THE LAW

Federal Statutes & Regulations:

- Tenants have legal rights not enjoyed by tenants in private housing
- Landlords’ discretion concerning admission of tenants is limited
- Tenants pay 30% of income for rent and utilities
- Subsidized tenancies not time limited & tenants may be evicted only for good cause
- Specific notices & pre-termination meeting to contest admission denial or subsidy termination or eviction required
II. Eviction - All Laws

30 Day Notice to Vacate:
- Unless non-payment of rent, or willful or criminal act not remediable which poses a threat to health or safety, 30 day written notice to vacate required
- Less than 30 day written notice if willful or criminal act poses a threat to health or safety
- Notice not necessary when term is to end at a certain time
- Unlawful detainer filed prior to expiration of notice period should be dismissed
II. Eviction - All Laws

5 Day Pay or Quit Notice
(for nonpayment of rent):

- If non-payment of rent, landlord must give tenant written notice to either move or pay rent in 5 days
- Notice must be for a “sum certain”
- Landlord may not refuse tender of rent or other payment
- Landlord may waive timely payment of rent or waive other lease breach
II. Eviction - VRLTA & MHLRA (not in Landlord & Tenant Law)

Landlord to give tenant 21/30 or 30 day notice:

- If non-compliance remediable, written 21/30 day notice
- If non-compliance non-remediable, written 30 day notice
- If prior 21/30 day notice for breach which was remedied and subsequent breach of like nature, written 30 day notice
- Landlord may recover reasonable attorney’s fees, unless tenant shows failure to pay rent or vacate was reasonable
II. Eviction - Only in MHLRA

**Sixty day notice for termination of tenancy:**

- Either party may terminate lease for a term of 60 days or longer by giving 60 days advance written notice.
- Landlord may not willfully interrupt utilities or essential services, remove home from the lot, or any self-help measure.
- If termination due to rehabilitation or change in the use of all or part of the park, 180 days advance written notice required.
II. Eviction - VRLTA & MHLRA (not in Landlord & Tenant Law)

Prohibited provisions in rental agreements:
- Forgoing rights & remedies under VRLTA or MHLRA
- Confession of judgment
- Paying landlord’s attorney’s fees, except as authorized by VRLTA or MHLRA
- Limitation of landlord’s liability
- Agreeing to firearm restriction or prohibition as a tenant in public housing
- Security deposit in excess of two months’ rent
- If landlord brings an action to enforce prohibited provision, tenant may recover actual damages and reasonable attorney’s fees
II. Eviction - VRLTA & MHLRA (not in Landlord & Tenant Law)

Landlord’s rules & regulations must be reasonable:
To be enforceable, a landlord’s rule must:

- Promote convenience, safety or welfare of tenants, preserve property from abuse, or make fair distribution of services & facilities
- Be reasonably related to the purpose for which it is adopted.
- Apply to all tenants in a fair manner
- Be sufficiently explicit to fairly inform tenant what he/she must & must not do
- Not be for evading landlord’s obligations
- Be provided to tenant when lease entered
II. Eviction - VRLTA & MHLRA (not in Landlord & Tenant Law)

Tenant not to be evicted if victim of family abuse:
- Lease not terminate due to family abuse if:
  - Tenant provides to landlord written documentation as victim of family abuse & exclusion of perpetrator within 21 days
  - Tenant notifies landlord of perpetrator’s return within 24 hours (or within 7 days if had no knowledge)
- Otherwise, tenant responsible for co-tenants, occupants, guests & invitees on premises with tenant’s consent, whether known or not
II. Eviction - Only in MHLRA

Limitations on grounds for eviction of tenant:

● Nonpayment of rent.
● Violation of building or housing code caused by lack of reasonable care
● Violation of law detrimental to health, safety and welfare of other residents in park
● Violation of rule or lease provision materially affecting health, safety and welfare of tenant or others
● Two or more violations of any rule or lease provision within a 6 month period
II. Eviction - Only in MHLRA

Right to sell home upon eviction:
- Tenant evicted from park has 90 days after judgment within which to sell home or remove home from park
- Tenant must pay rent and maintain home after eviction
- Right to keep home in park conditioned upon payment of all rent prior to judgment and monthly rent as it becomes due
- Park has a lien on the home to the extent rent not paid
II. Eviction - VRLTA & MHLRA (not in Landlord & Tenant Law)

Prohibition on retaliatory conduct or eviction:

- No selective rent increase, decrease in services, or bringing or threatening action for possession after landlord knows tenant:
  - Complained to govt agency about housing
  - Complained to or sued landlord about violation of law
  - Organized or joined tenants’ organization
  - Testified in court against landlord
- Landlord may bring action for possession if tenant violates housing code, tenant is in default in rent, or tenant breached lease affecting health & safety
II. Eviction - All Laws

**Recovery of Possession Limited:**
- Landlord may not cut off utilities, lock tenant out, or evict without going to court
- Five steps of eviction
  - Written notice from landlord to tenant
  - Unlawful detainer after notice period
  - Landlord gets judgment of possession
  - Landlord gets Writ of Possession
  - Writ served, Sheriff waits at least 72 hours, returns & evicts **only** on date stated on Writ
II. Eviction - All Laws

**Remedy for Lawful Ouster:**
- If utility cut off, lock out or self-help eviction, tenant has quick remedy in General District Court
- Tenant’s Petition for Relief from Unlawful Exclusion (Form DC-431)
- May ask for recovery of possession, resumption of interrupted utility, termination of rental agreement, actual damages and reasonable attorney fees
III. Non-payment of Rent - All Laws

Right of Redemption:
• Unlawful detainer dismissed if tenant pays all amounts owed: (i) all rent & arrears due as of first court date, (ii) all late charges & attorney’s fees in written lease, (iii) interest and (iv) court costs
• On or before the first court date
• Tenant can give written commitment, from local government or non-profit, to pay redemption within 10 days
• Only once every 12 months tenant lives in same place
III. Non-payment of Rent
- VRLTA & MHLRA (not in Landlord & Tenant Law)

Non-compliance as defense to non-payment of rent case:
- Poor housing conditions may be a defense, if:
  - Prior to UD, landlord served written notice by tenant or notified of violation
  - Landlord did not remedy after reasonable opportunity
- Tenant, if in possession, must pay into court amount of rent found to be due & unpaid
- Landlord may show conditions do not exist, conditions remedied, conditions caused by tenant, or tenant unreasonably refused entry to permit correction
- Court may: order rent set-off, end lease, or refer matter to housing inspector
III. Non-payment of Rent
- VRLTA & MHLRA (not in Landlord & Tenant Law)

**Limitation on acceptance of pre-judgment rent:**

- Landlord’s acceptance of rent without reservation, with knowledge of tenant’s noncompliance, waives right to terminate lease
- Pre-judgment reservation notice may be given either in five day pay-or-quit notice or within 5 business days of receipt of each pre-judgment payment
- Even if rent accepted with reservation, tenant still has right of redemption and redemption tender
III. Non-payment of Rent - Only in VRLTA

**Limitation on acceptance of post-judgment rent:**

- Post-judgment reservation notice must be given within 5 business days of receipt of each post-judgment payment
- Notice must state payment accepted with reservation and does not constitute a waiver of landlord’s right to evict
- If landlord enters new written lease with tenant prior to eviction, order of possession obtained prior to entry of new lease is not enforceable
IV. Repairs - All Laws

Landlord’s Obligations:
1) Follow building & housing codes
2) Make repairs & keep place fit and habitable
3) Keep common areas clean and safe
4) Maintain electrical, plumbing, sanitary, heating, ventilating, AC & other facilities
5) Prevent moisture & growth of mold
6) Maintain garbage receptacles for garbage
7) Supply water, hot water, AC if provided, and heat in season; unless tenant alone controls the utility

- Parties may agree in writing that tenant perform duties 3, 6 and 7, only if done in good faith and not to evade landlord obligations.
IV. Repairs - Only in VRLTA

Landlord must provide notice of insecticide/pesticide use:

- Landlord must provide at least 48 hours advance notice of insecticide or pesticide use; if tenant requests insecticide or pesticide, 48 hour notice not required
- Landlord must post in common areas at least 48 hours advance notice of insecticide or pesticide use
IV. Repairs - All Laws

Tenant’s Obligations:
- Comply with tenant duties in building and housing codes
- Keep unit clean and safe
- Keep premises free from insects & pests and promptly notify landlord of insects or pests
- Use utilities & appliances reasonably
- Not destroy or mess up property
- Not disturb neighbors
- Prevent moisture & growth of mold
- Not paint if premises built prior to 1978 and lease requires prior written approval
- Be responsible for conduct of persons on the premises with tenant’s consent
- Follow lease & reasonable rules
IV. Repairs - All Laws

Tenant’s Assertion (Rent Escrow Case): To get repairs, tenants must do four things:
1) Be current in rent and stay current
2) Give written notice to landlord
3) Wait a reasonable period of time
4) Take written notice & next month’s rent – within 5 days of due date – to General District Court & file Tenant’s Assertion
   - Court may hold escrow for up to six months, disburse escrow, end lease, etc.
   - No rent withholding or repair & deduct
   - Tenant can’t move without written notice
IV. Repairs - VRLTA & MHLRA (not in Landlord & Tenant Law)

Tenant remedy if landlord fails to provide utilities or essential services:

- If landlord fails to supply heat, running water, hot water, electricity, gas or other essential service, tenant must serve written notice and:
  - Recover damages based on diminution of fair rental value, or
  - Procure reasonable substitute housing, which excuses non-payment of rent during landlord’s non-compliance

- No rights until tenant gives written notice
- No rights if condition caused by tenant
V. Security Deposits - Landlord & Tenant Law & VRLTA (not in MHLRA)

**Inspection of dwelling unit at move-in:**
- Within five days of move-in, landlord must give tenant written report listing damages and tenant must submit any changes, in writing, within five days, otherwise deemed correct
- Landlord also may allow tenant to prepare a written report listing damages and landlord must submit any changes, in writing, within five days, otherwise deemed correct
- Parties may prepare & sign written report together, in which case deemed correct
V. Security Deposits - Landlord & Tenant Law & VRLTA (not in MHLRA)

Disclosure of mold in dwelling units:

- At move-in, landlord shall disclose whether there is visible evidence of mold
- If so, tenant may terminate lease or stay
- If tenant stays, landlord shall remediate in five business days, re-inspect & provide new report
V. Security Deposits - Landlord & Tenant Law & VRLTA (not in MHLRA)

Relocation of tenant for mold remediation:

- Landlord may require tenant to temporarily vacate for up to 30 days to do mold remediation and must provide comparable unit at no cost to tenant
- Tenant must pay rent.
- Landlord shall pay all costs of mold remediation, unless tenant fault
V. Security Deposits - Landlord & Tenant Law & VRLTA (not in MHLRA)

Disclosure of defective drywall:
- If landlord has actual knowledge of defective drywall, must disclose to tenant prior to move-in
- Tenant not provided disclosure may terminate lease within 60 days of discovery of defective dry wall by providing 15 - 30 days advance written notice
V. Security Deposits - Landlord & Tenant Law & VRLTA (not in MHLRA)

Disclosure property was used to make methamphetamine: (effective as of 7/1/14)

- If landlord has actual knowledge unit was used to make methamphetamine, must disclose to tenant prior to move-in
- Tenant not provided disclosure may terminate lease within 60 days of discovery that unit was used to make methamphetamine by providing 15 - 30 days advance written notice
V. Security Deposits - VRLTA & MHLRA (not in Landlord & Tenant Law)

Limit on security deposits; move out inspection:

- Limited to two months’ rent
- Applied to rent, reasonable late fees in lease, damages beyond reasonable wear & tear, other charges in lease
- Refund and/or itemized list 45 days after move out
- New LL (if any) must return security deposit
- LL must make reasonable efforts to advise tenant of right to be present at move out inspection
- Tenant may advise landlord of desire to be at inspection; landlord notify tenant of date & time of inspection; must be within 72 hours of move out
VI. Leases - VRLTA & MHLRA (not in Landlord & Tenant Law)

Disclosure of authorized agents, etc.:

- Landlord or agent shall disclose to tenant, in writing at or before start of tenancy, name & address of owner, and any person authorized to act for owner or authorized to manage premises
- If sale, landlord shall notify tenant of sale, and name, address & phone of purchaser
- If plan to convert or demolish property, landlord must disclose that in writing to any prospective tenant
VI. Leases - VRLTA & MHLRA (not in Landlord & Tenant Law)

Unsigned lease effective if rent accepted without reservation:

- If landlord does not sign lease, acceptance of rent without reservation gives lease same effect as if landlord signed
- If tenant does not sign lease, acceptance of possession or payment of rent without reservation gives lease same effect as if tenant signed
Application deposit refunded if unit not rented:

- Landlord may require refundable application deposit, in addition to nonrefundable application fee
- If applicant fails to rent the unit, landlord shall refund application deposit, less actual expense and damages, within 20 days
- Tenant may recover application deposit wrongfully withheld and reasonable attorney fees
VI. Leases - Only in VRLTA

Terms and conditions of rental agreements:

- If written request for an accounting, landlord must provide within 10 business days
- If lease says landlord to approve sublessee, failure to act within 10 business days is approval
- A copy of written lease signed by tenant and landlord shall be provided to tenant within one month
- No unilateral change in a lease unless
  - Notice of change given in accordance with lease, and
  - Both parties consent in writing to the change
VI. Leases - Only in VRLTA

If pre-paid rent, landlord must place in escrow:

- Prepaid rent shall be placed in an escrow account within 5 business days and shall remain there until prepaid rent becomes due
- Unless landlord entitled to receive prepaid rent, it shall not be removed without tenant’s written consent
VI. Leases - Only in VRLTA

Landlord may require or obtain damage/renter’s insurance for tenant:

● Cannot require both a security deposit and damage insurance if total cost exceeds 2 months’ rent

● Cannot require both a security deposit and renter’s insurance if total cost exceeds 2 months’ rent and premiums must be paid prior to the start of tenancy

● Landlord may obtain either insurance for tenant and recover actual costs from tenant
VI. Leases - Only in MHLRA

**Written agreement required:**

- Written agreement, signed and dated by all parties, required **prior** to start of tenancy
- Landlord must give tenant signed and dated lease and a copy of the MHLRA or a clear & simple explanation of the MHLRA’s duties, within 7 days after tenant signs
- Written lease cannot contravene MHLRA
- Written lease may only require tenant pay rent, utility charges, and reasonable charges for landlord supplied services or facilities
Offer of one year lease required:

- Residents must be offered one year lease under same terms and conditions as shorter term leases (except rent discounts may be offered for shorter leases)
- Upon lease expiration, automatic renewal under same terms and conditions, unless at least 60 days advance written notice
- If automatic renewal, no increase in or additional security deposit
VI. Leases - Only in MHLRA

Demands and charges prohibited:

- Landlord may not charge nor collect:
  - Entrance fee
  - Commission on sale of manufactured home
  - Fees for improvements on exterior of home
  - Fees from any provider of cable TV, cable modem, satellite TV other TV service
  - An exit fee for moving a home from a park.

- Tenant’s guests shall have free access to the home site without charge
VI. Leases - Only in MHLRA

Sale or lease of manufactured home by owner:

- Landlord shall not unreasonably restrict sale or rental of home in the park by tenant
- Prior to selling or renting tenant must give notice to landlord of prospective buyer or renter if prospective buyer or renter intends to occupy home in that park
- Landlord has burden to prove restriction on sale or rental is reasonable
VII. Early Termination - Absent in all Laws

**Early Lease Termination:**
- Other than active duty military and domestic violence victims, no legal right to end a lease early, even for compelling reasons such as age, disability or job relocation
- Lease may have rules about early termination
- Tenant should give landlord a 30 day advance written notice
- Landlord must mitigate damages
VII. Early Termination - All Laws

Early lease termination by military personnel:

- Active duty military may end lease early if:
  - Permanent transfer orders to move 35 miles or more
  - Temporary transfer orders in excess of 3 months to move 35 miles or more
  - Discharged or released from active duty
  - Ordered to report to government-supplied quarters & loss of allowance for quarters.

- Tenant gives 30-60 day written notice of termination & copy of the transfer orders.

- Tenant responsible for rent through date of termination.

- No liquidated damages
VII. Early Termination - All Laws

**Early lease termination for victims of family abuse:**

- Tenant may end lease early if victim of family abuse and has obtained Protective Order or perpetrator convicted of crime of sexual assault
- Tenant gives 30-60 day written notice of termination & a copy of Protective Order or criminal conviction order
- Tenant responsible for rent through date of termination
- No liquidated damages
- Co-tenants remain responsible for lease balance. If perpetrator is sole remaining tenant, landlord may terminate lease & collect actual damages from perpetrator.
VII. Early Termination - Landlord & Tenant Law & VRLTA (not in MHLRA)

Disclosure of property near military air installation:
• Landlord of a property in any locality in which a military air installation is located must disclose that fact to tenant prior to move-in
• Tenant not provided disclosure may terminate lease during first 30 days of lease by providing 15 - 30 days advance written notice
VII. Early Termination - VRLTA & MHLRA (not in Landlord & Tenant Law)

**Tenant remedy if landlord fails to deliver possession:**
- If landlord willfully fails to deliver possession, rent abates until possession delivered
  - Tenant may terminate lease with 5 day advance written notice
  - Upon termination, landlord shall return all pre-paid rent and security deposit
  - Tenant also may file action for possession
VII. Early Termination - All Laws

Tenant may give Landlord 21/30 or 30 day notice:

- If non-compliance remediable, written 21/30 day notice
- If non-compliance non-remediable, written 30 day notice
- If prior 21/30 day notice for breach which was remedied and subsequent breach of like nature, written 30 day notice
- Tenant may recover damages, injunctive relief and reasonable attorney’s fees
VII. Early Termination - All Laws

Rent abatement/reduction if property destroyed:

- If unit damaged or destroyed, either landlord or tenant may terminate lease
- Tenant may terminate by vacating and within 14 days giving written termination notice; lease ends as of date of vacating
- Landlord may terminate by giving 30 days advance notice; lease terminates as of end of notice period
- Landlord has no duty to rebuild
VII. Early Termination - All Laws

**Landlord to provide written notice of abandonment:**

- If landlord cannot determine if unit abandoned, landlord gives tenant written notice requiring tenant to give landlord written notice within 7 days of intent to remain
- If tenant gives notice within 7 days, or landlord determines tenant remains, landlord shall not treat premises as abandoned
- If tenant does not give notice within 7 days, rebuttable presumption premises abandoned, and landlord shall mitigate damages
VIII. Late Fees - Absent in all Laws

**Late Fees:**
- Unregulated by all landlord-tenant laws
- Most courts not allow late fees unless in writing
- Most courts not allow a *per diem* late fee
- Some courts have a local limit on late fees (e.g., 10%), applied to entire rent, or only to unpaid portion
- If a late fee can be characterized as a penalty unrelated to actual loss, it should be unenforceable at common law
IX. Landlord Access - Only in VRLTA

Limitation on landlord’s access to premises:

- Tenant cannot unreasonably withhold consent to landlord to enter rental unit
- Landlord may enter rental unit without tenant’s consent only in an emergency
- Landlord may not abuse right of access or use it to harass tenant
- Except in an emergency, landlord must give tenant notice of intent to enter and enter only at reasonable times
- Unless impractical, landlord must give tenant at least 24 hours advance notice
IX. Landlord Access - Landlord & Tenant Law & VRLTA (not in MHLRA)

Access after tenant granted exclusive possession:

- Tenant granted exclusive possession under permanent Protective Order or pendent lite divorce order may provide landlord with copy of order & get new lock
- At end of tenancy, tenant pays landlord reasonable costs incurred by landlord
- Landlord shall not give copies of keys to any person excluded by such order
IX. Landlord Access - Only in VRLTA

**Landlord & tenant remedies for abuse of access:**

- If tenant refuses to allow access, landlord may obtain injunction or terminate lease and seek damages & reasonable attorney’s fees
- If landlord makes unlawful entry or entry in an unreasonable manner, tenant may obtain injunction or terminate lease and seek damages & reasonable attorney’s fees
X. Landlord Barring of Guests  
- VRLTA & MHLRA (not in Landlord & Tenant Law)

Limitation on landlord’s barring tenant’s guest/invitee:

● Tenant’s guest or invitee may be barred by written notice, served on both tenant and guest, for conduct on landlord’s property, which violates the lease or the law, and describes the conduct which is the basis of the action.

● Tenant may file Tenant’s Assertion to review landlord’s action.
XI. Landlord Releases of Information - Only in VRLTA

Confidentiality of tenant records:
If tenant has not given written consent, landlord may not release information unless –

- A matter of public record
- A summary of tenant’s rent payment record
- A remediable breach notice not remedied
- A non-remediable breach notice
- Requested by law enforcement
- Requested by subpoena
- Requested by contract purchaser of property
- Provided in an emergency
And now to see if you were paying attention:

**A P O P Q U I Z**

Which one of the following did **not** appear in this PowerPoint?

(a) Adam & Eve  
(b) a Barbie Doll  
(c) Bedbugs  
(d) A Military Jet  
(e) Mold  
(f) a Piggy Bank  
(g) Soldiers  
(h) Stephen Colbert
Answer:

Bedbugs

(We had mice, rats, spiders, cockroaches, ants & fleas, but no bedbugs.)

THE END
Introduction

Federally subsidized housing issues typically are encountered in State court in the context of an unlawful detainer or other eviction case. Unlike private landlord-tenant cases, federally subsidized landlord-tenant cases are set against a backdrop of extensive federal regulations which determine, among other things, admissions, rents, lease provisions, and in many situations, pre-eviction grievance hearing rights. Some familiarity with the array of federal regulations is needed to understand the underlying issues which may arise in a federally subsidized landlord-tenant eviction case.

Tenants in federally subsidized housing have important legal rights not enjoyed by tenants in private housing:

1. Landlords’ discretion concerning admission of tenants is limited to some degree.

2. Many subsidized housing tenants pay only 30% of their income for rent and utilities, and in all cases, the total rent landlords can charge is government regulated.

3. Usually, subsidized tenancies do not have time limited terms. As long as the tenant does not materially violate the lease or the law, the tenant is entitled to continued occupancy and may be evicted only for good cause.

4. Subsidized tenants often must be given specific notices of, and the opportunity to have, some type of pre-termination meeting with management or administrative hearing to contest the reasons for admission denial or subsidy termination.

Federally Subsidized Housing: Unit-Based

I. Types of Unit-based Federally Subsidized Housing – Assistance is tied to the housing unit.
A. Public Housing. Conventional public housing is owned and operated by a public housing authority (PHA). The program began with the passage of the Housing Act of 1937, which established a system of public ownership of low income rental housing through state-created housing authorities. See, Code of Virginia §36-1 et. seq. The U.S. Department of Housing and Urban Development (HUD) pays the PHA’s operating expenses over and above tenant rental payments (30% of tenant income) through an Annual Contributions Contract (ACC). See, 42 U.S.C. §1437 et. seq.; 24 C.F.R. Parts 5, 912, 913, 960 and 966.

B. FHA Programs (§221(d)(3) and §236 programs). Both of these programs usually are privately owned, multi-family rental housing insured and subsidized by the Federal Housing Administration (FHA). The §221(d)(3) program began in 1961, and was replaced by the §236 program in 1968. FHA insures and subsidizes the developer’s mortgage, which results in lower interest rates (as low as 1% interest) and operating costs. For the §221(d)(3) program, see, 12 U.S.C. §1713; 24 C.F.R. §221.536. For the §236 program, see, 12 U.S.C. 1715z-1; 24 C.F.R. §236.75 - 236.760. For both, see, 24 C.F.R. §245.247.

C. Farmer’s Home Administration (FmHA) §515 Rural Rental Housing. As with the §221(d)(3) and §236 programs, this program usually is privately owned, multi-family rental housing, with the insurance and subsidy provided by what formerly was called FmHA and now is known as the Rural Housing Service, Rural Economic and Community Development, U.S. Department of Agriculture. This program operates only in rural areas outside of a Standard Metropolitan Statistical Area (SMSA). See, 12 U.S.C. §1485; 7 C.F.R. Part 1930, Subpart C, Exhibit B (Multiple Housing Management Handbook).

D. §8 Unit-based Programs. Section 8 of the Housing and Community Development Act of 1974 created the §8 New Construction, §8 Substantial Rehabilitation, and §8 Moderate Rehabilitation programs. Usually these are privately owned, multi-family rental housing, with the insurance and subsidy provided by HUD. See, 42 U.S.C. §1437f, 24 C.F.R. Parts 880 and 881.

E. Identifying Programs. Usually it is not difficult to identify whether a tenant is a resident of unit-based federally subsidized housing. Most tenants will be aware if their landlord is a housing authority, or if they live in subsidized housing, because they know that their rent is based on their income and that they are subject to recertification requirements. Often, it is more difficult to determine the program under which the tenant is subsidized. There is no systemic way to address this. The following are suggestions:

1. If the lease and notices identify the housing authority as a lessor, the tenant is likely to live in conventional public housing.

2. If the project is private and a subsidy is involved, but the tenant dealt only with the project management in obtaining the unit and the subsidy, then the project is likely to be an FHA, FmHA §515, or §8 Unit-based project. Sometimes these projects can be differentiated by notations on leases and notices, which identify the program involved. The project management should know which program applies, and may be willing to inform the advocate or tenant. The HUD regional office in Richmond, the RECD state and district offices, and the Virginia Housing
Development Authority (VHDA) all maintain lists of the properties they oversee and the programs which apply to each.

F. **Common Themes.** All these unit-based federally subsidized housing programs have certain things in common. All of them must follow federal regulations about admissions, rents, leases, grievances and evictions.

II. **Admissions.**

A. **Applications.** In conventional public housing, applications usually are made at the PHA. *See, 24 C.F.R. §960.201 et. seq.* Other unit-based applications are made at the management office for the project.

B. **Waiting Lists.** In all programs, the application must be accepted, unless the waiting list is so long there is no reasonable possibility that new applicants will be housed promptly – often defined as within one year.

   1. While landlords have some discretion to admit tenants preferentially based on income or preference eligibility, they cannot accept applications only from applicants who fit within certain income ranges or from applicants with certain preference eligibilities.

   2. Once an application is accepted, the applicant’s name is entered on a waiting list. At the time of taking the application, the applicant must be advised of the availability of any applicable preferences for admission. The landlord may require applicants on a waiting list periodically to reaffirm interest in admission, and may remove applicants who fail to do so.

   3. Program waiting lists usually are kept by number of bedrooms needed, and also may be separated by the existence of validly promulgated local preferences.

   4. When a vacancy occurs, the landlord must offer the unit to eligible applicants in the order of bedroom size, preferences, and date & time of application.

C. **Mandatory Eligibility Criteria.**

   1. **Income.** Income eligibility is limited in all programs. For public housing, FHA, or §8 Unit-based projects, the tenant’s income can be no more than 80% of area median income. *See, 24 C.F.R. §5.603(b).* For FmHA §515 projects, the tenant’s income can be no more than 95% of area median income.

   2. **Resources.** There is no resource eligibility limitation. However, for assets in excess of $5,000, the greater of actual income earned on assets, or a presumed return, is included in income. *See, 24 C.F.R. §5.609(b)(3).*

   3. **Ability to pay rent.** Minimum income requirements cannot be imposed. However, FHA, FmHA §515, and §8 Unit-based landlords may consider objective inability to pay basic subsidized rent, without an additional subsidy, in determining admissions.
4. Families. Both single individuals and families are eligible for admission. See, 24 C.F.R. §5.403. Some FmHA §515 units are reserved for elderly and handicapped families.

5. Citizenship. Only U.S. citizens and eligible immigrants may be admitted. A noncitizen must have eligible immigration status under one of the six categories set forth in 42 U.S.C. §1436a. (See, 24 C.F.R. §5.500 et. seq. for the implementing regulations.) These are:

   a. Aliens lawfully admitted for permanent residence.

   b. Aliens who entered the U.S. prior to June 30, 1948, have continuously maintained U.S. residence, and are deemed to be lawfully admitted for permanent residence.

   c. Aliens lawfully present pursuant to an admission for asylum.

   d. Aliens lawfully present as a result of the exercise of discretion by the Attorney General for emergent reasons.

   e. Aliens lawfully present as a result of the Attorney General withholding deportation.

   f. Aliens lawfully admitted for temporary residence.

D. Other Selection Criteria.

1. PHA’s must have written tenant selection criteria. These written criteria must be posted where applications are taken and copies must be provided upon request. See, 24 C.F.R. §960.204. Written criteria are strongly suggested, but not required, for other subsidized landlords.

2. The PHA’s selection criteria must avoid concentration of very low income tenants, must avoid admitting tenants whose habits and practices may be detrimental to other tenants, and must establish reasonable and objective admission policies.

3. Tenant selection criteria shall be reasonably related to individual attributes and behaviors, and shall not be related to attributes and behaviors which may be imputed to groups or categories of persons. See, 24 C.F.R. §960.205.

4. The PHA may consider all information relevant to family behavior and suitability for tenancy, including, but not limited to:

   a. Past performance in meeting financial obligations, especially rent.

   b. A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences adversely affecting health, safety or welfare of other tenants.
c. A history of criminal activity involving crimes of physical violence to persons or property, and other criminal acts adversely affecting health, safety or welfare of other tenants.

5. PHA’s and subsidized landlords may not discriminate against an applicant based on having filed bankruptcy or having failed to pay discharged debts. *See*, 11 U.S.C. §525(a).

6. In the event of receipt of unfavorable information, consideration shall be given to the time, nature and extent of conduct, and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects. (*See*, 24 C.F.R. 960.205(d).) Examples include:

a. Evidence of rehabilitation.

b. Evidence of participation or willingness to participate in social service and counseling programs, and the availability of such programs.

c. Evidence of willingness to increase income, and the availability of training or employment programs.

E. Preferences. The PHA may adopt a system of local preferences for selection of families admitted to conventional public housing, based on local housing needs and priorities. *See*, 24 C.F.R. §960.206. These local option preferences include:

1. Preference for working families (head of household, spouse, or sole member is employed), provided this preference is given if head of household and spouse, or sole member, is age 62 or older, or is a disabled person.

2. Preference for families which include a disabled person, provided there is no preference for a person with a specific disability.

3. Preference for families which include victims of domestic violence.

4. Preference for single persons who are elderly (age 62 or older), displaced, homeless or disabled.

5. Residency requirements are prohibited; however, a residency preference is permitted; provided such a preference does not discriminate based on race, religion, national origin, sex, handicap, or age. Applicants who are working, or notified they are hired to work, in a residency preference area, must be treated as residents of the residency preference area. A residency preference must not be based on how long an applicant has lived or worked in a residency preference area.
F. **Discrimination.** PHA’s and subsidized landlord may not discriminate because of race, religion, national origin, sex, marital status, source of income, handicap, or age (unless it is a project reserved for the elderly or handicapped). *See, 24 C.F.R. §6.4.*

G. **Unit Size Issues.** As a general rule, occupancy is based upon two persons per bedroom. However, this rule has many exceptions based on room size, the age and sex of the tenants, and other factors. Within these guidelines, families should be able to choose to some extent the size dwelling they need in light of both family composition and waiting list size. Families with absent members, including children in foster care (but excluding active duty military personnel) must be given a sufficient number of bedrooms to house the entire family. Pregnant women should be given a unit size appropriate for the family after the birth of the child.

H. **Denials - Procedure.** All applicants whose applications are denied are entitled to prompt written notice of the denial. There is greater procedural protection for applicants denied admission to conventional public housing than to other subsidized housing. *See, 24 C.F.R. §960.208.*

1. In conventional public housing, the notice of denial must give reasons for the denial and notify the applicant of the right to a hearing and the right to have counsel at the hearing. The hearing requires a decision maker who did not make the initial decision, which must be based solely on the evidence presented at the hearing. There should be a written decision giving reasons for the decision.

2. In FHA and §8 Unit-based projects, rejected applicants generally must be notified in writing of the reasons for the denial and advised of their right to respond in writing or to meet with management if requested within 14 days. The meeting, if any, must be held with someone other than the person who made the decision. A written notice of the landlord’s decision based on the meeting must be provided within 5 days and the notice must inform the applicant of the availability of HUD review of the decision.

3. In FmHA §515 projects, rejected applicants have access to a more formal grievance procedure, as long as they are not clearly ineligible based on required statutory criteria such as income eligibility. *See, 7 C.F.R. §1944.551 et. seq.*

III. **Rents.** All tenants in subsidized housing pay a rent less than the rent they would pay for comparable housing on the private market. There are significant differences in the rent obligations of tenants depending upon their type of housing and their subsidy.

A. **Conventional Public Housing.** Once a year, the PHA must give each family the choice between two methods of determining tenant rent. Except for financial hardship cases, the family may not be offered this choice more than once a year. Regardless of whether the family pays flat rent or income-based rent, the family must pay at least minimum rent.

1. **Flat rent.** Under this method, rent is based on the market rent charged for comparable units in the private unassisted rental market, and is equal to the estimated rent for which the PHA promptly could lease the unit. *See, 24 C.F.R. §960.253(b).*
a. The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families attempting to become economically self-sufficient.

b. If a family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

2. Income-based rent. Under this method, tenants pay as their portion of the rent and utilities the higher of 30% of family adjusted monthly income, 10% of family gross monthly income, or that portion of a state welfare grant designated to meet housing costs. (No part of a welfare grant is designated by the Virginia Department of Social Services to meet housing costs.) See, 24 C.F.R. §960.253(c).

   a. Annual income is anticipated total income from all sources received by any household member. See, 24 C.F.R. §5.609. It also includes all net income derived from assets, and if net assets exceed $5,000, income can be imputed to those assets at the passbook savings rate.

   b. Certain receipts are excluded from income, such as temporary, sporadic or non-recurring income, gifts, medical insurance reimbursements, inheritances, insurance payments for personal or property losses, educational scholarships, earned income of children under 18, foster care payments, Food Stamps, fuel assistance, and other types of income specifically excluded by federal law.

   c. Deductions are made from gross annual income to reach adjusted annual income. See, 24 C.F.R. §5.611(a). These are:

      1) $480 for each dependent;

      2) $400 for any elderly or disabled family (head of household or spouse at least 62 or receives Social Security or SSI disability benefits);

      3) the sum of the following, to the extent that the sum exceeds 3% of annual income: (a) unreimbursed medical expenses of any elderly or disabled family, and, (b) unreimbursed reasonable attendant care expenses for each disabled member of the family to the extent necessary to enable any member of the family to be employed.

      4) any reasonable child care expenses necessary to enable a member of the family to be employed or further his or her education.

      5) any additional deductions which the PHA wishes to adopt by written policy.

   d. The adjusted annual income is divided by 12 to reach the net monthly income. The tenant’s rent and utility liability is based on 30% of that figure, except in the
unusual case where 10% of gross monthly income is greater. This is the total monthly tenant payment. See, 24 C.F.R. §5.628.

e. Where all utilities (except phone) are supplied by the PHA, total monthly tenant rent equals total monthly rent payment. Where some or all are not supplied by the PHA, total monthly tenant rent equals total monthly tenant payment minus the monthly utility allowance. See, 24 C.F.R. §5.634.

f. If the tenant pays for utilities, a utility allowance is deducted from the total monthly tenant payment. If the utility allowance exceeds the total monthly tenant payment, the tenant pays no rent and receives a monthly check equal to the amount of the difference. An allowable utility allowance is a reasonable consumption of utilities by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment, and should be in an amount that excess consumption which may result in a surcharge should be reasonably within the control of a tenant or household to avoid. See, 24 C.F.R. §965.501 et. seq. Generally, the utility allowance must be reviewed annually and adjusted to reflect utility rate increases that cumulate to 10% or more. Request for relief from surcharges for excess consumption may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill, or disabled residents. See, 24 C.F.R. §965.508.

B. §8 Unit-based Projects. Income-based rent, as set in conventional public housing, is charged in §8 unit-based projects. See, 24 C.F.R. §§5.634 and 880.201.

C. FHA and FmHA §515 Projects. Tenants in these projects who do not receive any other form of subsidy pay rent at the higher of a “base rent” or 30% of their net income, up to a maximum of the “note rate” or the “market rate.” These rates are set by HUD and RECD based on operating costs.

D. Recertifications and Reporting. To assure that tenants are paying the correct amount of rent and occupy the appropriate unit size, all subsidized housing tenants must undergo regular and interim recertifications of relevant family information. See, 24 C.F.R. §960.257.

1. The family must report changes in family composition and income as may be necessary for the landlord to make determinations with respect to rent, eligibility and unit size. If the landlord receives such information, he must make any adjustment determined to be appropriate.

2. Failure to timely report increases in income or changes in family composition, or false reporting of such information, can be grounds for termination of the tenancy.

3. All increases or decreases in regular income should be reported immediately, but small changes may not lead to changes in tenant rent. For example, RECD regulations only require recertification when income increases by $40 or more per month, or decreases by $20 or more per month.
4. Rent increases become effective the first day of the second month after an increase in income or decrease in deductions. Rent decreases become effective the first day of the month after the events causing a reported decrease in income or increase in deductions.

5. If change in family size require a different unit size, the family must accept a move to an appropriately sized unit if and when offered by the landlord.

6. If the appropriate rent adjustments are not made due to the fault of the tenant, the tenant must repay any underpayments, and is not entitled to any repayment of overpayments. Tenant repayment is unnecessary and tenant refunds are appropriate if the over or underpayments were caused by the landlord after the tenant reported the relevant change in circumstance.

E. Lump Sum Income. With one statutory exception, lump sum payments for the delayed start of periodic payments – including annuities, insurance policies, retirement funds, pensions, disability or death benefits – are considered income. However, a lump sum payment may be counted either as future income to determine future rent, or as back income to determine back rent. In almost all cases, it will be more advantageous to count the lump sum income as back income to determine back rent. A statutory change excludes from income lump sum payments for the delayed start of Social Security disability benefits which otherwise might be included in rental calculations. See, 42 U.S.C. §1437a(b)(4) and 24 C.F.R. §5.609(c)(14).

IV. Leases – The subsidized landlord must have a written lease, which says certain things. Among these things are: the amount of rent, when rent is due, the PHA’s duty to keep the housing decent, the tenant’s rights and duties, the way to handle grievances, and the way to handle evictions.

A. Prohibited Clauses. The following clauses cannot be contained in any subsidized housing lease: 1) waiver of notice of lease termination, 2) distraint for rent and other charges, 3) landlord exculpatory clauses, 4) jury trial waiver, 5) confession of judgment, 6) waiver of legal proceedings, 7) waiver of appeal rights, and 8) tenant chargeable with legal costs regardless of outcome of case. See, 24 C.F.R. §§880.606(b)(2)(ii) and 966.6.

B. Reasonableness. All program leases must be reasonable. As to the reasonableness of lease clauses, see, Richmond Tenants Organization v. Richmond Redevelopment and Housing Authority, 751 F.Supp 1204, 1205 (E.D. Va. 1990), aff’d, 947 F.2d 942 (4th Cir. 1991) (42 U.S.C. §1437d(l)(1) requires lease provisions to be rationally related to a legitimate housing purpose and not overbroad for that purpose). RTO v. RRHA gave broad PHA discretion to formulate reasonable lease provisions to deal with local problems, but invalidated a lease provision making all off-premises criminal behavior grounds for eviction and prohibiting all weapons from units. The court also approved lease clauses providing for: 1) a ten-day notice of transfer to appropriate unit size, 2) a system of citations for trash on premises, 3) 24 hour eviction notices for health & safety violations, 4) evictions for others’ behavior and automatic termination for repeated violations after notice and opportunity to cure, and 5) a ten-day guest limitation without written permission from management.
C. Public Housing. Lease requirements for public housing are set forth at 24 C.F.R. §966.4. Proposed lease revisions must be provided to tenants and tenant organizations for comment at least 30 days before they become effective. The PHA must take tenant comments into consideration in making revisions.

D. FHA and §8 Unit-based Projects. HUD Handbook 4350.3 contains a model lease which must be used in most unit-based §221(d)(3), §236, and §8 projects. Other subsidized housing leases also must be reasonable, and must be approved by FHA, RECD or the PHA. Subsidized housing lease amendments also must be approved by one of these agencies, and tenants must be given at least 30 days notice before they go into effect.

E. FmHA §515 Projects. Lease requirements for FmHA §515 projects are set forth at 7 C.F.R. Part 1930, and project leases also must be approved by RECD on a case by case basis. Changes in FmHA §515 leases also must be approved by the agency and implemented through a prescribed notice procedure. See, 7 C.F.R. Part 1930, Subpart C, Exh. B, ¶VIII(F).

F. Excess Charges. In all programs, landlords are allowed to charge tenants reasonable amounts for additional services or maintenance, which may include late fees, damage and repair charges, utility surcharges, security deposits, and mandatory meals in an elderly project. See, 24 C.F.R. §966.4(b)

G. Security Deposits. In all programs, security deposits are limited by regulation, usually to the higher of a minimal set amount (such as $50.00) or the tenant portion of the rent. In public housing, the PHA may collect the security deposit in up to three monthly installments at the beginning of the lease. See, 24 C.F.R. §966.4(b)(5). All programs must make some provision for joint landlord and tenant move-in and move-out inspections, and landlord retention of a statement of the condition of the premises at the outset of the tenancy.

H. Maintenance. All subsidized landlords have the duty to keep the premises in a decent, safe and sanitary condition. PHA’s must repair all damages to the premises caused by ordinary wear and tear. PHA leases must contain a provision giving the tenant the right to alternative accommodations, if available, or an abatement of rent where the tenant’s unit, without tenant fault, contains conditions hazardous to the life, safety or health of the occupants. See, 24 C.F.R. §966.4(h). Generally, other subsidized housing leases also will contain landlord covenants to keep the premises in good repair, and these covenants are enforceable by tenants under state law.

V. Community Service. Each PHA must develop a local policy for administering the community service and economic self-sufficiency requirements for conventional public housing tenants. See, 24 C.F.R. §960.600 et. seq.

A. General Requirements. Except for exempt individuals, each adult resident of conventional public housing must contribute 8 hours per month of community service, or participate for 8 hours per month in an economic self-sufficiency program, or some combination thereof.
B. Exemptions. Exempt individuals are: (1) 62 years of age or older, (2) blind or disabled, (3) a primary caretaker of a blind or disabled individual, (4) is engaged in work activities, (5) those is exempted from a Welfare-to-Work program, or (6) those engaged in a Welfare-to-Work program. See, 24 C.F.R. §960.601(b).

VI. Grievances. In most, but not all, subsidized housing, a tenant who has a problem with the landlord’s action may ask, in writing, for a grievance hearing. This is held in front of an unbiased person. Under this procedure, the tenant may look at the landlord’s records, have a representative, present evidence, question the landlord’s evidence, and have a written decision.

A. Public Housing. Tenants must be given the opportunity administratively to air their grievances based on the PHA’s acts or failure to act which adversely affect tenant rights. See, 24 C.F.R. §966.50 et. seq.

1. Exclusions. The PHA may exclude from the grievance procedure any grievance concerning a termination of tenancy that involves (a) any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or PHA employees, or (b) any drug-related criminal activity on or near the premises. In addition, the grievance procedure is not applicable to disputes between tenants not involving the PHA or to class grievances. See, 24 C.F.R. §966.51(2)(i).

2. Steps in Procedure.

   a. Adverse action. Unless excluded, a tenant may grieve any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant’s lease or PHA regulations which adversely affects the individual tenant’s rights, duties, welfare or status.

   b. Informal conference. This must be personally presented, either orally or in writing, to the PHA so the grievance can be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and given to the tenant, with a copy retained in the tenant’s file. The summary shall specify the names of the participants, dates of meeting, nature of the proposed disposition of the complaint and specific reasons therefor, and the procedures by which a hearing may be obtained. See, 24 C.F.R. §966.54.

   c. Request for Hearing. This must be requested within a reasonable time after receipt of the summary of the informal conference, and shall specify reasons for the grievance and the action or relief sought. See, 24 C.F.R. §966.55(a).

   d. Selection of Hearing Officer/Panel. A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review, or a subordinate of such person. See, 24 C.F.R. §966.55(b).
e. Escrow deposit. In a grievance involving the amount of rent, the tenant must pay rent (including the disputed amount) into escrow; although this must be waived in cases of financial hardship. See, 24 C.F.R. §966.55(e).

f. Hearing rights. The hearing must be scheduled promptly by the hearing officer/panel for a time and place reasonably convenient to both the tenant and the PHA. The tenant shall be afforded a fair hearing, which shall include: opportunity to examine relevant PHA records before the hearing, the right to be represented at the hearing, the right to a private hearing, the right to present evidence and arguments, the right to controvert PHA evidence, the right to confront and cross-examine all PHA witnesses, and a written decision based solely on the evidence. See, 24 C.F.R. §§966.55(f) and 966.56.

g. Hearing conduct. The hearing shall be conducted informally and pertinent evidence may be received without regard to admissibility under rules of evidence applicable to judicial proceedings. See, 24 C.F.R. §966.56(f).

h. Hearing decision. Within a reasonable time after the hearing, the hearing officer/panel shall prepare a written decision with the reasons therefor, which shall be given to the tenant, with a copy retained in the tenant’s file. The decision shall be binding on the PHA, which shall take all actions, or refrain from all actions, necessary to carry out the decision; unless the PHA’s Board of Commissioners determines within a reasonable time that: (a) the grievance does not concern PHA’s action or failure to act in accordance with the individual tenant’s lease or PHA regulations, which adversely affects the individual tenant’s rights, duties, welfare or status, or (b) the decision is contrary to applicable federal, state or local law, HUD regulations, or requirements of the annual contributions contract between HUD and the PHA. See, 24 C.F.R. §966.57.

i. No waiver of tenant’s rights. A decision in favor of the PHA shall not constitute a waiver of, nor affect in any manner whatever, the tenant’s rights to a trial de novo or judicial review in any judicial proceedings brought thereafter. See, 24 C.F.R. §966.57(c).

B. FHA and §8 Unit-based Projects. Tenants in these programs have no formal grievance rights other than those for tenancy termination disputes. In these case, a complaint to HUD sometimes is effective in resolving disputes between the landlord and tenant. There is no formal procedure, but such administrative complaints should be in writing, fully set forth the facts and law related to the dispute, and request that the agency resolve the dispute within a designated reasonable time.

C. FmHA §515 Projects. Tenants in these projects have grievance rights similar to public housing tenants, except that all tenancy termination decisions are excluded from the grievance procedure. Tenants may use the grievance procedure to deal with a number of other issues such as maintenance, security, guests and visitors, and the amount of rent owed, without going to court. See, 7 C.F.R. §1944.551 et. seq.
VII. Evictions – All subsidized housing landlords must have a good reason to evict a tenant, such as not paying rent, not obeying the lease, damaging property, or causing a danger to health or safety.


B. Notice Requirements.

1. Content. A statement of the specific grounds for termination, giving factual bases for the conclusion that termination is warranted, is required. The statements must be sufficient to allow the tenant to prepare a defense. Vague accusations and unsupported references to alleged violations of lease provisions are insufficient. Notices to terminate must include a statement of any right to review the decision, how that right can be exercised, and any time limits on accessing the right to review. Notices to terminate also must state the proposed termination date.

a. Public housing termination notices also must include notice of the tenant’s right to reply and right to examine relevant documents. If a grievance hearing is not available, the notice must contain a statement as to why it is not, what judicial eviction procedure will be used, and that HUD has approved that procedure as complying with due process. See, 24 C.F.R. §966.4(l)(3). Under state law, public housing termination notices also must advise the tenant of the name, address and telephone number of the legal aid program serving the area. Code of Virginia §55-248.6(D).

b. Other subsidized housing termination notices also must include statements that the landlord must use court procedures to evict the tenant, that the tenant has the right to present defenses, and that the landlord can rely only on the grounds for eviction stated in the notice, unless the landlord was unaware of those grounds when the notice was served.

c. FmHA §515 housing regulations provide for a two-step notice process. First, the landlord gives the tenant a notice of lease violation. In addition to a specific statement of the alleged violation, the notice also must: 1) refer to relevant provisions of the lease, 2) state that the tenant or household member will be expected to correct the lease violation by a specific date, 3) advise of the right to meet with the landlord to discuss the matter before the correction date, and 4) that if the violation is not corrected, the owner may bring an eviction action and, in that event, the tenant has the right to present a defense. Second, if the violation is not remedied within the time given in the notice of violation, the landlord must give the tenant a notice of termination. This notice must include: 1) a statement that the tenancy is terminated and that the
landlord will proceed with an eviction action, 2) the reason for the termination, and 3) the
location & regular office hours where the tenant can review and copy information in his/her file.

2. **Timeliness.**

   a. **Public housing.** In public housing, notices to terminate based on nonpayment of rent must provide 14 days to pay or quit. When the alleged violation concerns the creation or maintenance of a threat to the health or safety of other tenants or PHA employees, the notice must be given in a reasonable time under the circumstances. In all other cases, including termination for failure to pay excess charges, the public housing tenant must be given 30 days notice. See, 24 C.F.R. §966.4(l)(3).

   b. **Other subsidized housing.** In all other subsidized tenancies, state law controls timeliness of tenancy termination notices. See, Code of Virginia §§55-222, 55-225, & 55-248.31.

C. **Grounds for Termination of Tenancy.** Public and subsidized housing tenancies may be terminated only based on some good cause. See, 24 C.F.R. §966.4(l)(2).

   1. **Good cause requirement.** In all programs, good cause is defined as serious or repeated noncompliance with material lease terms; serious or repeated violation of federal, state or local law placing obligations upon tenants; or other good cause.

      a. Good cause is a factual question.

      b. Emphasis should be placed on serious consequences of the loss of subsidized housing for the tenant. A subsidized housing tenant is “by definition, one of a class who cannot afford acceptable housing so that he is condemned to suffer grievous loss” if that benefit is lost. See, Caulder v. Durham Housing Authority, 433 F.2d 988, 1003 (4th Cir. 1970).

      c. Emphasis also should be placed on the need for serious wrongdoing on the part of the tenant, the need for tenant fault, and that the tenant should not be penalized for circumstances beyond the tenant’s control.

      d. If the conduct of guests or other third parties is involved, the tenant should not be evicted for the conduct of others that the tenant could not foresee or control.

      e. Emphasis also should be placed on facts showing the tenant has cured the situation and should be allowed to remain, as well as apparent landlord failures to comply with regulatory procedural requirements.

   2. **Material violation of lease or law.** This generally means: (a) one or more substantial violations of the rental agreement, or (b) repeated minor violations of the rental agreement which disrupt the livability of the project, adversely affect the health or safety of any
person, adversely affect the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project, or have an adverse financial effect on the project.

a. **Rent-related defaults.** Nonpayment of rent is always a material violation of the lease. However, in subsidized tenancies, not all charges may be considered rent. Late charges, premise damage charges, repair assessments, utility surcharges, and other excess charges are not treated as “rent” under any public or subsidized housing program. Therefore, they cannot be asserted as grounds for termination of tenancy for nonpayment of rent, and a longer notice period or opportunity to cure may be required than the 14 day (or 5 day) pay or quit period for nonpayment of rent claims.

1) A defense to an eviction based on nonpayment of rent can be based on landlord’s failure to promptly recertify a tenant after notice of a decrease in income or increase in deductions.

2) Landlord’s failure to receive the government portion of the rent due to landlord’s improper termination of the tenant’s subsidy should be a sufficient defense.

3) Repeated late payment may be grounds for eviction, but not if the late payments are caused by innocent late receipt of income.

4) Like private tenants, public and subsidized housing tenants may assert defenses to rent and possession based on the condition of the premises. However, a condition precedent to the assertion of this defense is that prior to the commencement of the action, the landlord received written notice of the conditions from the tenant or from an appropriate agency, the landlord refused after reasonable opportunity to correct the conditions, and the tenant, if in possession, pays rent found to be due into court. See, Code of Virginia §55-248.25.

b. **Unauthorized residents.** Most public and subsidized housing leases also provide for tenancy termination when the dwelling is used as a residence for persons not listed as household member on the lease. At the same time, tenants have the right to reasonable accommodation of guests and visitors. The differences between a permanent resident and a temporary guest lie along a continuum. There is no bright line. In determining where a set of circumstances falls along that continuum, courts have considered the following factors, among others: the intended length of stay, any monetary payment, moving in belongings such as clothes and furniture, receipt of mail at the tenant’s address, the guest’s regular receipt of other guests at the premises, and whether the alleged resident has an actual place of regular abode other than the tenant’s dwelling.

c. **Failure to comply with reporting requirements.** Proper assessment of tenant rents and occupancy requirements in public and subsidized housing depends on accurate and timely reporting of changes in tenant income or family circumstances. Thus, a tenant’s failure to make such reports accurately or timely can lead to termination of tenancy. Such termination will be justified when inaccurate reporting is due to tenant fraud. However,
negligent failures to report, or to report accurate information, are insufficient for termination or eviction. *See, Ellis v. Ritchie*, 803 F.Supp 1097 (E.D. Va. 1992). The tenant must be shown to have notice of the reporting requirements at issue and the consequences of failure to report.

d. **Poor housekeeping and premise damages.** Tenant housekeeping habits which do not pose a threat to the health or safety of others should not be grounds for eviction. These type of cases often raise fair housing and Americans with Disabilities Act (ADA) issues of reasonable accommodations of handicaps which make thorough housecleaning and tenant maintenance difficult.

e. **Tenant responsibility for acts of others.** A PHA or subsidized landlord may evict the entire family for criminal or severely disruptive acts of one family member or a guest, but only if the tenant knew or should have known of the possibility that the conduct was occurring or might occur (*i.e.*, the conduct was foreseeable), and failed to do everything reasonably within his/her power to stop it (*i.e.*, the tenant acquiesced to the conduct). Evidence that the wrongdoer was not invited onto the premises by the tenant or household member also has been a successful defense.

f. **Drug and crime cases.** Public housing leases must contain a provision that the tenant shall be obligated to assure that the tenant, any member of the household, a guest, or any other person under the tenant’s control, shall not engage in: (a) any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or PHA employees, or (b) any drug-related criminal activity on or near the premises. Drug-related criminal activity means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use, of a controlled substance. Although drug-related criminal activity is grounds for eviction, HUD and U.S. Justice Department efforts to secure pre-hearing forfeitures of public and subsidized housing leases on premises allegedly used for drug trafficking consistently have been rejected. *See, Richmond Tenants Organization v. Kemp*, (E.D. Va. 1990), *aff’d*, 956 F.2d 1300 (4th Cir. 1992).

1) **Public housing.** In public housing lease terminations, the PHA has discretion to consider all the circumstances of the case, including the seriousness of the offense, the extent of family member participation in the offense, the effect of termination on other family members, the possibility of continuing the subsidy for non-offending family members, excluding only the offending family member from the premises, and continued occupancy upon proof of completion of a treatment program. *See, 24 C.F.R. §966.4(l)(5)(i).* These are the same factors that the courts have applied in determining whether a family member or guest’s activities justify termination under the lease provisions. When a PHA evicts an individual for drug-related criminal activity, the PHA shall notify the local post office that such individual no longer resides in the unit. *See, 24 C.F.R. §966.4(l)(5)(ii).*

2) **FHA and §8 Unit-based housing.** Leases must contain a provision providing for eviction for any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises. *See, 42 U.S.C. §1437f(d)(1)(B)(iii) and 24 C.F.R. §880.607(b)(1)(iii).*
3) **FmHA §515 housing.** RECD regulations specifically provide that drug-related crimes are grounds for termination. Unlike HUD’s statutes and regulations, no specific provision is made for violent crimes. See, 7 C.F.R. Part 1930, Subpart C, Exh. B, ¶¶VIII and XIV.

3. **Other good cause.** Regulatory provisions which allow a public or subsidized landlord to terminate a tenancy for other good cause should be viewed as limitations on permissible grounds for termination. Public landlords may not evict for arbitrary, discriminatory, or other manifestly improper reasons. In addition, state law requires prior notice of and an opportunity to cure most grounds for eviction. See, Code of Virginia §55-248.31.

**D. Other Issues in Judicially Litigated Evictions.**

1. **Fair housing defenses.** Fair housing and civil rights laws are fully applicable to all public and subsidized housing tenancies. Both HUD and RECD have the duty to assure nondiscrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d. HUD also has the duty to affirmatively further fair housing under the federal Fair Housing Act, 42 U.S.C. §3608. All these programs also are covered by §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the Americans with Disabilities Act (ADA), which prohibit recipients of federal funds from discriminating against the handicapped.

2. **Waiver.** Continued acceptance of government subsidies can amount to a waiver of the landlord’s right to terminate for a prior breach. See, 1991 Va.A.G. 240 (acceptance of payment for full amount of rent without notice of reservation of right under Code of Virginia §55-248.32 waives breach). A waiver of breach of contract by the tenant also may be implied from the landlord’s repeated acceptance of deviating performance.

3. **First Amendment/Retaliation.** Public and subsidized housing evictions also have been successfully defended on grounds of retaliation and First Amendment rights to free speech. See, **Holt v. Richmond Redevelopment and Housing Authority**, 266 F.Supp 397 (E.D. Va. 1966).

4. **Bankruptcy.** A tenant may be able to stay an eviction and reinstate the lease through bankruptcy. Government entities, including PHA’s, may not discriminate on the basis of a tenant having filed bankruptcy.

5. **Appeal bonds.**

   a. **Non non-payment of rent cases.** Under Code of Virginia §16.1-107

   No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to Code of Virginia §16.1-107. . . . In all civil cases, except
trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents, no indigent person shall be required to post an appeal bond.

In these cases, where non-payment of rent is not the basis for the eviction, bring the federal poverty guidelines to General District Court, ask Judge for permission to take evidence as to indigency, and to waive appeal bond.

May have to ask Circuit Court to waive writ tax and costs. Use Petition for Proceeding in Civil Case Without Payment of Fees or Costs (Form CC-1414).

b. Non-payment of rent cases. Bonds required to appeal a case from General District Court to Circuit Court should be based only on the tenant’s share of the rent. Under all the programs, the landlord will continue to receive any government subsidy as long as the tenant remains in residence, so a bond based on the total rent payment is excessive.

**Federally Subsidized Housing: Tenant-Based**

### I. Program Description

A. In 1974, Congress enacted §8 of the revised United States Housing Act of 1937 as the primary means for the federal government to provide assistance for low-income housing. See, 42 U.S.C. §1437f. The Housing Choice Voucher Program, as revised and reauthorized in 1998, swallowed up the former §8 Certificate program, and all outstanding certificates were converted to Vouchers. See, Pub L. #105-276, §514 (10/21/98), rewriting 42 U.S.C. §§1437d(c)(4)(A)(I) and 1437f(d)(1)(A).

B. Under the Housing Choice Voucher Program, public housing authorities (PHAs) or any state or local agency authorized to administer §8 tenant-based assistance, apply for Voucher funds from the U.S. Department of Housing and Urban Development (HUD). These §8 agents advertise the program to landlord and tenants, and take applications from tenants to determine eligibility under statutory and HUD guidelines and their administrative plans.

C. Low-income families apply with the §8 agent for assistance. Those determined eligible receive a Voucher or a place on the waiting list. Unlike the former Certificate program, the total tenant contribution for a rental unit (unit + utilities) may be up to 40% of adjusted monthly income at initial lease-up.

D. Once the participant has the Voucher, that person must locate a unit in the private market that meets federal housing quality standards for decent, safe and sanitary housing. See, 42 U.S.C. §1437f(o)(8)(B). When the participant finds both a suitable unit and a willing landlord, the landlord and tenant ask the §8 agent to approve the leasing of the unit under the program. See, 24 C.F.R. §982.302. The §8 agent then determines whether the rent is reasonable, whether the lease conforms to federal requirements, whether the landlord is suitable, and whether the unit meets housing quality standards. See, 24 C.F.R. §982.305.
E. If everything is approved, the landlord and tenant execute the lease, and the §8 agent and landlord enter into a Housing Assistance Payments (HAP) contract. Under the HAP contract, the §8 agent will pay the landlord the difference between the family’s contribution and the approved contract rent, up to the applicable payment standard. See, 24 C.F.R. §982.451.

F. Although for many years landlords could not terminate Voucher tenancies without cause at the end of the lease, in 1998, Congress enacted legislation eliminating this good cause requirement. See, Pub. L. #105-276, §545 (10/21/98). The HAP contract runs for the term of the lease and requires no renewal.

G. When participating in the §8 program, the landlord has the obligation to continue to maintain the housing in conformity with the housing quality standards. The §8 agent has a duty to ensure that the landlord meets these maintenance requirements by inspecting each unit at least annually and more often if a tenant brings specific complaints to the §8 agent. See, 24 C.F.R. §982.405. If, after trying, the §8 agent cannot secure the needed repairs from the landlord, it has the power to suspend or reduce HAP payments. If that does not bring about the needed repairs, the §8 agent may terminate the HAP contract, and if it does, it must issue the family a new Voucher. See, 24 C.F.R. §982.404 & §982.314.

H. The major sources of tenants’ rights under the Voucher program are:

- The Annual Contributions Contract (ACC) between HUD and the §8 agent.
- The HAP contract between the §8 agent and the landlord.
- The lease between the landlord and the tenant.

II. Eligibility

A. Maximum income limits are “low-income” – 80% of area median income (AMI), “very low-income” – 50% of area median income (AMI), and “extremely low-income” – 30% of area median income (AMI). These are available at the HUD website and change annually. See, http://www.huduser.gov/portal/datasets/il/il2015/2015summary.odn. As an illustration, in the Richmond, VA area, for FY 2015:

<table>
<thead>
<tr>
<th></th>
<th>1 person</th>
<th>2 people</th>
<th>3 people</th>
<th>4 people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely low-income</td>
<td>$15,600</td>
<td>$17,800</td>
<td>$20,090</td>
<td>$24,250</td>
</tr>
<tr>
<td>Very low-income</td>
<td>$26,000</td>
<td>$29,700</td>
<td>$33,400</td>
<td>$37,100</td>
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<tr>
<td>Low-income</td>
<td>$41,550</td>
<td>$47,500</td>
<td>$55,450</td>
<td>$59,350</td>
</tr>
</tbody>
</table>

B. All extremely low-income and very low-income families are eligible. Low-income families must also be continuously assisted, or displaced by certain housing conversion or home ownership programs, or meet additional criteria in the §8 Agency’s Administrative Plan. See, 24 C.F.R. §982.201.
C. There are no limitations on family assets for purposes of eligibility; however, assets may affect income eligibility by their impact on income. If total countable assets exceeds $5,000, amount included in annual income is actual income from the assets, or a HUD-prescribed imputed income, whichever is greater. A household’s disposition of an asset for less than fair market value during the two years prior to admission does not affect eligibility, but does affect the amount of rent the family will pay after admission.

D. Annual income is the family’s gross annual income, not adjusted income. See, 24 C.F.R. §§5.609, 5.653(e), and 960.201(b).

E. Both “single individuals” and “families” are eligible. See, 42 U.S.C. §1437a(b)(3)(A). No federal definition limits a family to individuals who are related by blood, marriage or operation of law. See, 24 C.F.R. §5.403.

F. Although the remaining member of a tenant family usually is eligible for voucher assistance, this is not automatically true in Virginia. See, Carter v. Meadowgreen Associates, 268 Va. 215, 597 S.E.2d 82 (2004).

F. Only citizens and seven categories of non-citizens are eligible:

- Aliens lawfully admitted for permanent residence.
- Aliens who entered the U.S. prior to June 30, 1948, have continuously maintained U.S. residence, and are deemed to be lawfully admitted for permanent residence.
- Aliens lawfully present pursuant to an admission for asylum.
- Aliens lawfully present as a result of the exercise of discretion by the Attorney General for emergent reasons.
- Aliens lawfully present as a result of the Attorney General withholding deportation.
- Aliens lawfully admitted for temporary residence.
- Aliens who are lawful residents under compact between the U.S. and the Marshal Islands, Micronesia and Palau.

III. Preferences

A. Residency requirements are barred. See, 24 C.F.R. §§5.655(c)(1)(i), 960.206(b)(1)(i), and 982.207(b)(1)(i). Residency preferences are permitted, as long as they do not have the purpose or effect of delaying or denying admission based on race, religion, national origin, age, gender or disability. See, 24 C.F.R. §§5.655(c)(1)(v) and 982.207(b)(1)(iv).

B. Preferences may be granted for:

- Working families. See, 24 C.F.R. §§5.655(c)(2) and 982.207(b)(2).
- Elderly, displaced, homeless and disabled. See, 24 C.F.R. §§5.655(c)(5) and 982.207(b)(5).
- Former federal preferences – i.e., persons involuntarily displaced, residents in substandard housing, and persons facing rent overburden paying more than 50% of income for rent. See, 24 C.F.R. §§5.655(c)(5) and 982.207(b)(5).
C. Public housing residents applying for vouchers may not be denied a preference or otherwise excluded merely because they are public housing residents. See, 42 U.S.C. §1437f(s) and 24 C.F.R. §982.207(a)(4).

IV. Targeting Very Low-Income & Extremely Low-Income Applicants

A. The §8 agent must make 75% of the new and turnover vouchers available to extremely low-income (ELI) families. See, 42 U.S.C. §1437n(d) and 24 C.F.R. §982.201(b)(2).

B. The §8 agent must skip over higher-income families to meet voucher targeting requirements. See, 24 C.F.R. §982.207(d).

V. Screening

A. The §8 agent may consider factors such as an applicant’s prior rent paying history, history of disturbance of other tenants or destruction of property, and history of criminal activity. See, 24 C.F.R. §982.307.

B. The §8 agent may not discriminate against families if members are unwed parents, recipients of public assistance, have children born out of wedlock, or are members of a protected class (race, religion, national origin, age, gender or disability). See, 24 C.F.R. §982.202(b)(3).

C. The §8 agent must consider whether a family member is currently engaging in criminal activity or has engaged in criminal activity during a reasonable period of time before issuance of the voucher. See, 24 C.F.R. §982.553(a)(2)(ii).

D. The §8 agent may reject an applicant who has been evicted from federally assisted housing in the past five years. See, 24 C.F.R. §982.552(c)(1)(ii).

E. The §8 agent may reject an applicant who owes a debt to that §8 Agency or any agency administering a federally assisted housing program. See, 24 C.F.R. §982.552(c)(1)(v) and (vi).

F. The §8 agent may reject an applicant who was terminated from the voucher program. See, 24 C.F.R. §982.552(c)(1)(ii).

VI. Unit Size

A. The §8 agent must establish a local policy about the relationship between family size and number of bedrooms, and must balance the limiting of subsidies needed to house a family with avoiding overcrowding. See, 24 C.F.R. §§982.4 and 982.402(b)(1).

B. It is consistent with the Housing Quality Standards to allow for two persons per living room and/or bedroom. See, 24 C.F.R. §982.402(d). However, except for the very young,
children of the opposite sex cannot be required to share a bedroom. See, 24 C.F.R. §982.402(d)(2)(ii).

C. The §8 agent may grant an exception to the local unit size rules if justified by age, sex, health, handicap, relationship of family members or other personal circumstances. See, 24 C.F.R. §982.402(b)(8).

VII. Search Time

A. The §8 agent must grant an initial voucher term of at least 60 days, and has full discretion to increase the initial search time beyond 60 days and may allow for any number of extensions. See, 24 C.F.R. §982.402(b)(8).

B. The voucher holder is not entitled to a hearing upon the §8 agent’s refusal to grant an extension of the voucher search term. See, 24 C.F.R. §982.554(c)(4).

VIII. Eligible Unit

A. Certain units are ineligible for voucher assistance, including units in public housing, unit-based §8 housing, units where the voucher hold owns or has an interest in the unit, or if the unit is owned by a close relative or member of the voucher household. See, 24 C.F.R. §982.352(a).

B. The §8 agent may disqualify a unit because the landlord has violated HUD rules, state or local housing codes, failed to pay state or local taxes, or refused to terminate the tenancy of other federally subsidized tenants who engaged in illegal drug activity or violent criminal activity. See, 24 C.F.R. §982.306(c).

IX. Rent for the Unit

A. There is a limit on the amount of rent that a new participant in the voucher program may pay for the unit, known as the 40% cap.

B. The §8 agent also must determine if the rent for the unit is reasonable

X. Portability & Mobility

A. Voucher holders may use their vouchers nationwide, as long as there is a §8 agent administering a program for the jurisdiction where the unit is located.

B. The §8 agent may restrict portability for up to one year if the family getting the voucher for the first time does not have a legal domicile in the jurisdiction at the time of application. See, 42 U.S.C. §1437f(r)(1)(B)(i) and 24 C.F.R. §982.353(b) & (c).
C. The initial §8 agent must give the family information about portability and how to contact the receiving §8 agent. The initial §8 agent determines screening, preferences and the initial term of the voucher. See, 24 C.F.R. §982.355(c)(6) & (c)(10).

D. The receiving §8 agent determines income-eligibility, unit size, payment standard and the decision to extend the voucher. See, 24 C.F.R. §982.355(c)(6) & (c)(7)

E. The §8 agent must give the family information on how portability works and for those families living in a high poverty census tract, an explanation of the advantages of moving to an area with a low poverty concentration. See, 24 C.F.R. §982.301(a)(3) & (b)(4).

F. The §8 agent may adopt different payment standards for areas within the jurisdiction to improve mobility. See, 24 C.F.R. §982.503(b)(ii) & (e).

XI. Nondiscrimination Against Voucher Holders

A. Owners who participate in the low-income housing tax credit (LIHTC) program, the Home Investment Partnerships program (HOME), the §17 Rental Rehabilitation & Redevelopment program, the Housing Development Action Grant (HoDAG) program, Mark-to-Market Restructuring plans, or who purchased HUD-owned developments cannot discriminate against applicants because they are participating in the Voucher program. See, Pub. Law #103-66, §13,142(b)(94) (8/10/93); 42 U.S.C. §12,745(a)(1)(D); 42 U.S.C. §1437o note; 12 U.S.C. §1701z-12.

B. However, in 1998 Congress repealed two statutes that prohibited discrimination against voucher holders by all §8 landlords whose property contained more than four units.

C. Virginia’s Fair Housing Law, Code of Virginia §36-96.1, does not prohibit discrimination on the basis of income status, source of income, or receipt of public assistance.

XII. Waiting Lists

A. Because the demand for affordable housing far exceeds the supply, the §8 agent must maintain a waiting list.

B. For the voucher program, the opening and closing of the waiting list is an element of the annual plan submitted to HID, and must state if the waiting list is close, if closed how long it has been closed, and whether it will be opened in the coming year.

C. When opening the waiting list, the §8 agent must give public notice stating where and when to apply, and listing any limitations on who may apply. The notice must be published in a newspaper of general circulation and in minority media. See, 24 C.F.R. §982.206.

D. According to HUD instructions, voucher waiting lists of 12 to 24 months may be reasonable.
E. The §8 agency must include in the Administrative Plan the rules for removing families from the waiting list. See, 24 C.F.R. §982.54. If a notice is sent that an applicant has been removed from the waiting list, a request for informal review must be filed within a reasonable time from the date of notice.

F. If failure to respond to a request for information or an update was due to a family member’s disability, the §8 agent must make a reasonable accommodation and reinstate the family to the former position on the waiting list. See, 24 C.F.R. §982.204(c).

XIII. Tenant Rents

A. Voucher tenants receive a housing subsidy based on the tenant’s income but which is unrelated to the actual rent charged. See, 42 U.S.C. §1437f(o)(2) and 24 C.F.R. §982.1(a)(4)(ii). Voucher landlords may charge any rent, as long as it is reasonable in comparison with rents charged for comparable dwelling units in the private unassisted local market as determined by the §8 agent. The tenant makes up the difference between the contract rent and the maximum subsidy the §8 agent can authorize. Each §8 agent must have a rent reasonableness policy under which it evaluates contract rents. See, 42 U.S.C. §1437f(o)(10)(A) and 24 C.F.R. §§982.4, 982.54(d)(15), 982.158(f)(7) & 982.507.

B. For first time voucher tenants, the contribution toward contract rent and tenant-paid utilities may not exceed 40% of adjusted monthly income, or else the §8 agent cannot approve the lease-up. Tenants who remain in place with a voucher are not subject to a 40% of income limitation where there are subsequent changes in the contract rent. See, 42 U.S.C. §1437f(o)(3) and 24 C.F.R. §§982.305(a) & 982.508.

C. The landlord must notify the §8 agent of any change in the amount of the contract rent at least 60 days before any such changes go into effect. See, 24 C.F.R. §980.308(g)(4). The §8 agent must determine that the rent is “reasonable” in comparison to the rent for comparable unassisted units. See, 24 C.F.R. §§980.308(g)(4) and 982.507(a)(2)(i). If the §8 agent will not approve the rent as “reasonable,” the family cannot rent the unit under the voucher program. It does not matter that the family is willing to pay what the §8 agent will approve and what the landlord wants to charge. However, the §8 agent must offer assistance, where requested by the family, is negotiating a reasonable rent with the landlord. See, 42 U.S.C. §1437f(o)(10)(B) and 24 C.F.R. §982.506.

D. The tenant’s rent subsidy is based on a payment standard, or maximum monthly subsidy payment set by each §8 agent. See, 42 U.S.C. §1437f(o)(1) and 24 C.F.R. §§982.4, 982.503 & 982.508. This is based on, but not necessarily the same as, the §8 fair market rent (FMR) set annually by HUD and effective on October 1 of each year. The FMR usually is set at the 40th percentile of the standard units for the area (excluding public housing, newly built units and substandard units), but may be as high as the 50th percentile.

E. The §8 agent usually sets the payment standard at an amount no less than 90% nor more than 110% of the FMR. The process for setting and revising payment standards must be
set forth in each §8 agency’s annual plan and §8 administrative plan. See, 42 U.S.C. §1437c-1(b)(14) and 24 C.F.R. §§903.7(d) & 982.54(d)(14).

F. The tenant’s contribution toward the subsidized portion of the rent – usually is the difference between the payment standard and 30% of the tenant’s adjusted income. The amount of the payment standard does not vary with the rent charged for the unit. If the contract rent for the unit is greater than the payment standard, the tenant must pay out of pocket to cover the difference, in addition to the normal income-based contribution.

G. To determine the income-based contribution, annual income is determined, and deductions are subtracted to determine adjusted income.

H. Annual income is anticipated total income from all sources received by all household members. It includes, wages, tips, self-employment income, Social Security, SSI, pensions, insurance benefits, unemployment compensation, workers’ compensation, TANF, child support, spousal support, military payments, interest, dividends, and earnings (actual or imputed) from most assets. See, 24 C.F.R. §5.609(b).

I. Annual income does not include any amounts not actually received by the family, but does include all amounts – whether monetary or not – which go to or are on behalf of household members. See, 42 U.S.C. §1437a(b)(4) and 24 C.F.R. §5.609(a)(1).

J. Certain types of income are excluded from annual income for rent-setting purposes, including employment income from children; student loans & all forms of student financial assistance; lump sum additions to family assets such as inheritances, settlements for personal injury or property loss, and retroactive awards of Social Security & SSI; temporary, nonrecurring or sporadic income including gifts; medical insurance reimbursements; foster care payments; Food Stamps; fuel assistance; and other types of income specifically excluded by federal law.

K. Deductions are made from gross annual income to reach adjusted annual income. See, 24 C.F.R. §5.611(a). These are:

1) $480 for each dependent;

2) $400 for any elderly or disabled family (head of household or spouse at least 62 or receives Social Security or SSI disability benefits);

3) any reasonable child care expenses, for care of children under the age of 13, necessary to enable a member of the family to be employed or further his or her education.

4) the sum of the following, to the extent that the sum exceeds 3% of annual income: (a) unreimbursed medical expenses of any elderly or disabled family, and (b) unreimbursed reasonable attendant care expenses for each disabled member of the family to the extent necessary to enable any member of the family to be employed.
L. The adjusted annual income is divided by 12 to reach the net monthly income. The tenant’s rent and utility liability is based on 30% of that figure, except in the unusual case where 10% of gross monthly income is greater. This is the monthly tenant payment. See, 42 U.S.C. §1437a(a) and 24 C.F.R. §5.628.

M. Where all utilities (except phone) are supplied by the landlord, monthly tenant contribution equals monthly tenant payment. Where some or all are not supplied by the landlord, monthly tenant contribution equals monthly tenant payment minus the monthly utility allowance. See, 24 C.F.R. §5.634.

N. If the tenant pays for utilities, a monthly utility allowance is deducted from the monthly tenant payment. If the monthly utility allowance exceeds the monthly tenant payment, the tenant pays no monthly tenant contribution and receives a monthly check equal to the amount of the difference.

XIV. Utility Allowances

A. The monthly utility allowance must be based on the normal patterns of consumption for the community as a whole and current utility rates. The §8 agent must consider the typical cost of utilities and services paid by energy conservative households that occupy housing of similar size and type in the same locality. It must take into account the unit size, structure type (high-rise, row house, detached unit, etc.), and fuel type. See, 24 C.F.R. §982.517(b)(1) & (2).

B. The §8 agent must provide a higher utility allowance as a reasonable accommodation for families that include a disabled member who may require the additional use of utilities, such as heat or air conditioning. See, 24 C.F.R. §982.517(e).

C. The §8 agent must review its utility allowance at least annually, and must adjust the utility allowance schedule when there has been a change of 10% or more in utility rates or fuel costs since the last revision. See, 24 C.F.R. §982.517(c).

XV. Initial Certification, Annual Recertification and Interim Recertification

A. Voucher tenants must have initial and regular annual certifications of income and family composition. See, 24 C.F.R. §982.516. On a one-time basis, the household must supply Social Security numbers and verification of the same for all household members age 6 or older. Similar information is needed if a new household member is added. In addition, on a one-time basis, the household must supply declarations of their status as U.S. citizens, permanent residents, or eligible non-citizens, and verification of the same for all household members. Similar information is needed if a new household member is added.

B. HUD has not established clear requirements for how annual recertification is to be done in the voucher program, but left this up to individual §8 agencies. The recertification process should be set forth in the §8 administrative plan. There also should be written notice to participants of their program responsibilities. See, 24 C.F.R. §982.516.
C. To ensure that tenants pay rents commensurate with their ability to pay, as well as to comply with the statutory mandate based on adjusted monthly income, tenants are required to report changes in household income and composition which occur between regularly scheduled recertifications. Again, there are no explicit HUD requirements, and what must be reported is left up to the individual §8 agency.

D. Because most voucher families are not aware of the §8 administrative plan, HUD requires that the §8 agent give written notice to the families of their obligations, including a written description of the grounds on which the §8 agent may deny or terminate assistance because of family action or failure to act. See, 24 C.F.R. §982.552(d)(1) & (2).

1) Failure to timely report increases in income or changes in family composition, or false reporting of such information, can be grounds for termination of the tenancy.

2) All increases or decreases in regular income should be reported immediately, but small changes may not lead to changes in tenant rent.

3) Rent increases become effective the first day of the second month after an increase in income or decrease in deductions. Rent decreases become effective the first day of the month after the events causing a reported decrease in income or increase in deductions.

4) If the appropriate rent adjustments are not made due to the fault of the tenant, the tenant must repay any underpayments, and is not entitled to any repayment of overpayments. Tenant repayment is unnecessary and tenant refunds are appropriate if the over or under-payments were caused by the §8 agent after the tenant reported the relevant change in circumstance.

XVI. Extra Charges

A. Extra items. Voucher landlords may not charge tenants for extra items, such as stoves and refrigerators, that customarily are provided at no additional cost to unsubsidized tenants. See, 24 C.F.R. §983.262(c).

B. Late fees. Voucher leases usually contain a provision where the tenant agrees to pay a given amount as a late fee for the tardy payment of rent. This usually takes the form of a flat charge, regardless of the length of the delinquency. In Virginia, this either is 5% or 10% of the delinquent amount, depending upon the locality.

C. Damage charges. Because the §8 voucher lease addendum, the VRLTA §55-248.13, and Code of Virginia §55-225.3, make the landlord responsible for maintenance, repairs, and damages caused by ordinary wear & tear, tenants are responsible only for reasonable charges for tenant caused damages beyond reasonable wear & tear.

D. Court costs and attorney’s fees. The §8 voucher lease addendum does not specifically set forth prohibited lease clauses, except to the extent the landlord may not charge the tenant
extra amounts not customary in residential landlord-tenant relationships in the locality. In Virginia, lease agreements to pay court costs and attorney’s fees are enforceable.

E. Under the table payments. In the voucher program, the tenant’s contribution is limited to 30% of adjusted income, plus the amount by which the §8 approved “reasonable rent” exceeds the applicable local voucher payment standard. See, 42 U.S.C. §1437a(a)(1) and 24 C.F.R. §982.507(a). Voucher landlords are prohibited from collecting amounts in excess of the tenant’s authorized rent. See, 24 C.F.R. §982.451(b). The §8 agent has no authority to terminate the tenant from the program for making unauthorized payments to the landlord. See, 24 C.F.R. §982.551.

XVII. Security Deposits

A. Voucher landlords are allowed, but not required, to collect security deposits. The §8 agent is allowed, but not required, to prohibit security deposits that exceed private market practice or are greater than the amounts charged to unassisted tenants. See, 24 C.F.R. §982.313. Under the VRLTA, Code of Virginia §55-248.15:1, the security deposit cannot exceed two months rent.

B. The §8 agent must conduct a pre-occupancy inspection of the dwelling unit, prepare a report of the conditions, and retain it in the §8 files for later use in the event of a subsequent landlord claim that the damages were tenant caused. See, 24 C.F.R. §§982.158(d), 982.305(a)(2) and 982.405(a). The §8 agent must notify the tenant of the inspection determination and must inspects units annually. See, 24 C.F.R. §§982.305(d) and 982.405.

C. When the tenant vacates, the landlord must provide the tenant with a written list of any deductions from the security deposit and promptly refund the unused balance. See, 24 C.F.R. §982.313(c); Code of Virginia §55-248.15:1.

D. The landlord may not claim reimbursement for damages from the §8 agent or for any vacancy loss after the tenant has vacated, but must seek to collect the balance from the tenant. See, 24 C.F.R. §982.313(e). Vacancy loss payments no longer are required or allowed. See, 24 C.F.R. §§982.311.

XVIII. Maintenance

A. Voucher landlords may develop their own leases, provided they are in writing, contain certain minimal information, and include the HUD prescribed tenancy addendum. The HUD prescribed tenancy addendum must be attached to every lease, cannot be changed by agreement of the parties, prevails in case of conflict with any other lease provision, and is enforceable against the landlord. See, 24 C.F.R. §982.308.

B. The HUD prescribed tenancy addendum requires the landlord to maintain the property and provide utilities sufficient to comply with the housing quality standards (HQS). See, 24 C.F.R. §982.401. These standards encompass sanitary facilities, food preparation and refuse disposal, space and security, heating and cooling systems, illumination and electricity, structure
and materials, interior air quality, water supply, absence of lead-based paint, access, site and neighborhood, sanitary condition, and smoke detectors.

C. Before approving a lease, the §8 agent must inspect the unit for compliance with HQS. If there are deficiencies to be correct, the §8 agent must notify the landlord of the work to be done. If the landlord takes remedial action, the §8 agent re-inspects the units before execution of a HAP contract with the landlord. After initial approval, the §8 agent continually supervises the unit through required annual inspections or special inspections upon complaint. See, 24 C.F.R. §§982.305 and 982.405.

D. If there are serious deficiencies that present an immediate danger to the health and safety of the family (such as lack of heat in the winter), the §8 agent must require the landlord to correct the deficiency within 24 hours. If the deficiencies otherwise violate the HQS, the §8 agent must require the landlord to correct the deficiency within 30 days. See, 24 C.F.R. §982.404(a)(3). If the landlord fails to provide required maintenance or correct deficiencies, the §8 agent must take prompt and vigorous enforcement action, which can include reduction, suspension (abatement) or termination of housing assistance payments or termination of the HAP contract. See, 24 C.F.R. §982.404(a)(2).

E. HUD has clarified the voucher regulations to say that a §8 agent’s withholding of the housing assistance payment does not give the landlord the right to evict the tenant for nonpayment of rent. See, 24 C.F.R. §§982.310(b) & 982.451(b)(4)(iii).

F. Voucher tenants are responsible for HQS violations caused by failure to pay for tenant-paid utilities, failure to provide or maintain any tenant-supplied appliances, and damages beyond ordinary wear and tear caused by any household member or guest. The tenant has 24 hours to correct any life-threatening breach and 30 days to correct others. See, 24 C.F.R. §982.404(b)(2). If the tenant breaches these obligations, the §8 agent can terminate the voucher. See, 24 C.F.R. §§982.404(b)(3) & 982.551(c).

XIX. Leases

A. The HUD voucher regulations do not expressly prohibit unreasonable lease clauses. The Virginia Residential Landlord Tenant Act (VRLTA), Code of Virginia §55-248.9, prohibits the following provisions in leases:

- Agreeing to waive or forego rights or remedies under the VRLTA.
- Agreeing to waive or forego rights or remedies pertaining to the required 120-day conversion or rehabilitation notice.
- Confessing judgment on a claim arising out of the rental agreement.
- Agreeing to pay the landlord’s attorney’s fees except as provided in the VRLTA.
- Agreeing to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith.
- Agreeing as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation.
• Agreeing to a security deposit in excess of two months rent.

B. Voucher landlords may develop their own leases, provided they are in writing, contain certain minimal information, and include the HUD prescribed tenancy addendum. The minimal information includes the names of the parties, the identification of the unit rented, the term of the lease, any renewal provisions, the amount of the monthly rent and a specification of what utilities and appliances are supplied by the landlord and by the tenant. See, 24 C.F.R. §§982.308(d).

C. The HUD prescribed tenancy addendum provides these basic tenant protections:

• The rent is limited to the reasonable rent approved by the §8 agent.
• Charging or collecting other payments from the tenant or any other source is prohibited.
• The tenant is not responsible for the HAP payment and cannot be evicted for nonpayment of the HAP.
• The landlord cannot require the tenant to pay extra for furniture, meals, supportive services, or anything else customarily included in the rent.
• The landlord must maintain the premises and provide utilities sufficient to comply with the housing quality standards.
• The landlord must give 60 days notice to the §8 agent of any rent changes.
• The parties must give each other written notice for any actions under the lease, and agreed changes to the lease must be in writing and provided to the §8 agent.
• During the term of the lease, the landlord may terminate tenancy only for specified good cause, preceded by notice and executed through court action.
• The landlord must provide an itemized list of charges against the security deposit and promptly refund any balance.
• The landlord may not discriminate on the basis of race, religion, national origin, age, gender, familial status, or disability.

D. The HUD prescribed tenancy addendum imposes these basic tenant responsibilities:

• The tenant must promptly report any birth or judicial custody award, and obtain prior written approval from the landlord and the §8 agent of any other additions to the household.
• The tenant must live in the voucher unit and not use it for profit-making activities, unless it is purely incidental.
• The tenant may not sublease, assign or transfer the unit.
• The tenant must pay that portion of the rent not covered by the assistance payment.
• The tenant must notify both the landlord and the §8 agent before vacating the unit.
• The tenant must allow the landlord to collect any balance owing under the lease in excess of the security deposit.
• The parties must give each other written notice for any actions under the lease.
• The lease automatically terminates if the HAP contract or if the §8 agent terminates the voucher.

E. Barred notices. Under Virginia law, to bar a tenant’s guest or invitee, a landlord must
give a notice in compliance with §55-248.31:01. This must be a written notice served personally upon the guest or invitee for conduct on the landlord’s property. The conduct must violate the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice must be served upon the tenant. The notice must describe the conduct of the guest or invitee which is the basis for the landlord’s action. The tenant may file a tenant's assertion, in accordance with Code of Virginia §55-248.27, requesting that the General District Court review the landlord’s action to bar the guest or invitee.

F. Landlord access. Under Virginia law, Code of Virginia §55-248.18, the tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours’ notice of routine maintenance to be performed that has not been requested by the tenant.


H. The Virginia Consumer Protection Act (VCPA), Code of Virginia §59.1-196 et. seq., excludes any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Code of Virginia §55-217 et. seq. or the VRLTA, Code of Virginia §55-248.2 et. seq., unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under §59.1-200.

I. Unconscionability can be used to invalidate or prevent enforcement of shockingly unreasonable lease clauses. Under Virginia law, an inequitable and unconscionable bargain has been defined to be “one that no man in his senses and not under a delusion would make, on the one hand, and as no fair man would accept, on the other.” The inequality must be so gross as to shock the conscience. See, Management Enterprises, Inc. v. Thorncroft Co., 243 VA. 469, 473, 416 S.E.2d 229, 232 (1992), citing, Smyth Brothers v. Beresford, 128 Va. 137, 170, 104 S.E. 371, 382 (1920).

XX. Administrative Procedures – Informal Review & Informal Hearing

A. The voucher program has both an “informal review” process available to aggrieved applicants, and an “informal hearing” process available to aggrieved participants. Under HUD regulations, participants are families who have received a voucher and who have had the §8 agent execute the first HAP contract with a landlord on their behalf. All others are applicants. See, 24 C.F.R. §982.4.
B. Notice to applicant. All applicants whose applications are denied are entitled to prompt written notice of the denial, containing a brief statement of the reasons, that the applicant may request an informal review of the decision, and how to obtain the informal review. See, 24 C.F.R. §982.554.

C. Informal review: when required. Pursuant to 24 C.F.R. §982.552(a)(2), informal review is required in the following cases:

- The applicant is denied a listing on the waiting list (assuming the waiting list is open).
- The applicant is denied a voucher or has a voucher withdrawn.
- The 8 agent refuses to execute a HAP contract or to approve a unit.
- The 8 agent refuses to provide assistance under the portability program.

D. Informal review: when not required. Pursuant to 24 C.F.R. §982.554(c), informal review is not required in the following cases:

- Discretionary administrative determinations.
- General policy issues or class grievances.
- Determination of family unit size.
- Determination not to approve an extension or suspension of a voucher term.
- Determination not to grant approval of the tenancy.
- Determination that a unit does not meet Housing Quality Standards.
- Determination that a unit is not in accordance with Housing Quality Standards because of family size or composition.

E. Informal review: procedures. The review is conducted by an impartial person appointed by the §8 agent, other than a person who made or approved the decision under review, or a subordinate of such person. The applicant must be given the opportunity to present written or oral objections to the decision, and must be notified in writing of the final decision after informal review, including a brief description of the reasons for the final decision.

F. Notice to participant. All families whose housing assistance is terminated are entitled to prompt written notice of the termination, containing a brief statement of the reasons, that the applicant may request an informal hearing on the decision, how to obtain the informal hearing, and the deadline by which to request an informal hearing. See, 24 C.F.R. §982.555.

G. Informal hearing: when required. An informal hearing is required in the following cases:

- Determination of the family’s annual or adjusted income and the use of such income to compute the housing assistance payment.
- Determination of the appropriate utility allowance (if any) for tenant paid utilities from the utility allowance schedule.
- Determination of the family unit size under the subsidy standards.
• Determination that a family is living in a unit with a larger number of bedrooms than appropriate for the family unit size.
• Determination to terminate assistance for a participant family because of the family’s action or failure to act.
• Determination to terminate assistance because the participant family has been absent from the assisted unit longer than the maximum period permitted.

H. Informal hearing: when not required. Pursuant to 24 C.F.R. §982.555(b), an informal hearing is not required in the following cases:

• Discretionary administrative determinations.
• General policy issues or class grievances.
• Establishment of the utility allowance schedule.
• Determination not to approve an extension or suspension of a voucher term.
• Determination not to grant approval of the unit or tenancy.
• Determination that a unit does not meet Housing Quality Standards. However, an informal hearing is available for a decision to terminate assistance for a breach of the HQS alleged to be caused by the family.
• Determination that a unit is not in accordance with Housing Quality Standards because of family size or composition.
• Determination to exercise or not to exercise any right or remedy against the landlord under the HAP contract.


1) Adverse action. Unless excluded, a tenant may request a hearing to dispute any §8 agent decision relating to the individual circumstances of the family and whether it is in accordance with the law, HUD regulations, and §8 agent policies.

2) Selection of Hearing Officer. An informal hearing is conducted by an impartial person designated by the §8 agent, other than a person who made or approved the PHA action under review, or a subordinate of such person. See, 24 C.F.R. §982.555(e)(4)

3) Discovery. The family must be given the opportunity to examine before the hearing any §8 agent documents directly relevant to the hearing. See, 24 C.F.R. §982.555(e)(2).

4) Hearing rights. The family must be given the opportunity to be represented at the hearing, the right to present evidence and arguments, the right to question any witnesses, and a written decision based solely on the evidence. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings. See, 24 C.F.R. §982.555(e)(5).

5) Hearing decision. The hearing officer must issue a written decision stating briefly the reasons for the decision, with factual determinations based on a preponderance of the evidence. See, 24 C.F.R. §982.555(e)(6).
6) Effect of Decision. The decision is binding on the §8 agent, unless: (a) it concerns a matter for which a hearing is not required or that otherwise exceeds the authority of the hearing officer, or (b) it is contrary to HUD regulations or requirements or to federal, state or local law. If the §8 agent determines it is not bound by a hearing decision, it promptly must notify the family of that determination and of the reasons therefor. See, 24 C.F.R. §982.555(f).

XXI. Voucher Termination

A. Grounds for Termination of Assistance. The §8 agent may terminate assistance because of certain kinds of conduct. See, 24 C.F.R. §§982.552 & 553. For all these grounds, except the first four, the §8 agent has discretion to consider circumstances, including the seriousness of the offense, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial on other family members who were not involved in the action or failure.

1) If a family is evicted from housing assisted under the voucher program.

2) If any member of the family fails to sign and submit consent forms for obtaining information.

3) If the family fails to submit required evidence of citizenship or eligible immigrant status.

4) If any member of the family fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education.

5) If the family violates any family obligations under the program, see, 24 C.F.R. §982.551, infra.

6) If any member of the family has been evicted from federally assisted housing in the past five years.

7) If a §8 agent ever has terminated assistance under the program for any member of the family.

8) If any member of the family commits drug-related criminal activity or violent criminal activity. However, the denial may not be based on mere possession of drugs occurring more than one year prior to the decision on the application.

9) If any member of the family has committed fraud, bribery, or other corrupt or criminal act in connection with any federal housing program.

10) If the family currently owes rent or other amounts to any §8 agent.
11) If the family has not reimbursed any §8 agent for amounts paid to a landlord under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

12) If the family breaches an agreement with the §8 agent to pay amounts owed to the §8 agent.

13) If a family participating in the Family Self Sufficiency (FSS) program fails to comply, without good cause, with the family’s FSS contract of participation, see, 24 C.F.R. Part 984.

14) If the family has engaged in or threatened abusive or violent behavior toward personnel of the §8 agent.

15) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

B. Family Obligations. The obligations of a participant family (breaches of which are grounds for termination of assistance) are set forth at 24 C.F.R. §982.551:

1) To supply required recertification information.

2) To establish eligible citizenship or immigration status.

3) To disclose Social Security numbers.

4) To sign consent forms needed to secure wage, income and claim information.

5) To provide true and complete information.

6) Not to cause a breach of the Housing Quality Standards.

7) To allow inspection of the unit by the §8 agent.

8) Not to commit any serious or repeated violation of the lease.

9) To notify the §8 agent and the landlord before moving out or terminating the lease.

10) To give the §8 agent a copy of any landlord eviction notice.

11) To use the assisted unit for residence only by the family.

12) To notify the §8 agent of the birth, adoption or court ordered custody of a child.
13) To obtain approval from the §8 agent to add any other person to the household.

14) To promptly notify the §8 agent if any family member no longer resides in the unit.

15) Not to sublease, assign or transfer the unit.

16) Not to be absent from the unit longer than permitted.

17) Not to own or have any ownership interest in the unit.

18) Not to commit fraud, bribery, or other corrupt or criminal act in connection with the program.

19) Not to engage in any drug-related or violent criminal activity.

20) Not to abuse alcohol in a way that threatens the health, safety, or right of peaceful enjoyment of other residents and persons in the immediate vicinity.

21) Not to receive duplicate assistance.

C. Eviction as grounds for termination of voucher. The landlord’s commencement of the eviction action alone is not grounds to terminate the tenant’s voucher or to stop making the assistance payments. See, 24 C.F.R. §§982.311(b) and 982.314(b)(2). Instead, the §8 agent must continue the payments until the eviction has become final because the court has issued a final judgment and all appeal rights have been exhausted.

XXII. Eviction

A. To evict, the landlord must take the tenant to court. During the term of the lease, the landlord must have a reason which is based upon good cause. As with any eviction, landlord must give the tenant a written 5-day pay or quit notice, or a written 30-day notice to vacate, and wait the required notice period, before filing the unlawful detainer action.

B. Procedural Law. The landlord may evict only by instituting court action. Before doing so, the landlord must give the tenant whatever notice is required under state law, and must provide the §8 agent a copy of the notice given to the tenant. The landlord’s failure to comply with the requirement that the eviction notice to the tenant also be sent to the §8 agent provides a procedural defense to the eviction action.

C. Substantive Law. During the term of the lease, the landlord may not terminate the tenancy except on the grounds of:
1) serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease,

2) violation of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises, or

3) other good cause.

D. Drug-related and criminal activity. Pursuant to 24 C.F.R. §982.310(c):

1) The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant’s control, is grounds for the owner to terminate tenancy. The lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

2) The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

   a) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

   b) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

   c) any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.

3) The lease must provide that the owner may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees (or is a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under Federal or State law.

4) The landlord may seek to evict a family for criminal activity by a covered person, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.
E. Other good cause. Pursuant to 24 C.F.R. §982.310(d), “other good cause” for termination of tenancy by the landlord may include, but is not limited to:

1) Failure by the family to accept the offer of a new lease or revision;

2) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

3) The landlord’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

4) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

F. During the initial lease term, the landlord may not terminate the tenancy for “other good cause” unless the landlord is terminating the tenancy because of something the family did or failed to do. During this period, the landlord may not terminate the tenancy for “other good cause” based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the landlord’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy.

G. Voucher landlords may terminate the lease without cause at the end of both the initial lease term and any renewal term. See 42 U.S.C. §§1437f(d)(1)(B) and 1437f(o)(7)(C) & (D) and 24 C.F.R. §982.310.

XXIII. Conclusion

Vouchers have more in common with public benefit programs such as Social Security, unemployment compensation, or workers’ compensation than it does with private landlord-tenant law. Vouchers are heavily regulated, and have many due process protections, and underlying constitutional issues. Because the voucher is indeterminate in length, a case potentially may involve a benefit which is worth tens of thousands of dollars, and may be substantially above the jurisdictional limit of the General District Court. Accordingly, these cases deserve heightened attention from both attorneys and the judiciary.
## APPENDIX I – RICHMOND AREA HOUSING CHOICE VOUCHER AGENCIES

<table>
<thead>
<tr>
<th>Agency</th>
<th>Area served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Virginia Resource Corporation</td>
<td>Cities of Colonial Heights, Hopewell, Petersburg &amp; Richmond and Counties of Amelia, Caroline, Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent &amp; Powhatan</td>
</tr>
<tr>
<td>4009 Fitzhugh Avenue, Suite 100 Richmond, VA. 23230</td>
<td>804-353-6503 (V) &amp; 804-353-5606 (F)</td>
</tr>
<tr>
<td>Chesterfield – Colonial Heights Department of Social Services</td>
<td>City of Colonial Heights and County of Chesterfield</td>
</tr>
<tr>
<td>9854 Lori Road, Suite 100 Chesterfield, VA. 23832</td>
<td>804-717-6832 (V) &amp; 804-717-6833 (F)</td>
</tr>
<tr>
<td>Goochland County Department of Social Services</td>
<td>County of Goochland</td>
</tr>
<tr>
<td>1800 Sandy Hook Road, Suite 200 Goochland, VA. 23063</td>
<td>804-556-5880 (V) &amp; 804-556-4718 (F)</td>
</tr>
<tr>
<td>Hanover Community Services Board</td>
<td>County of Hanover</td>
</tr>
<tr>
<td>12300 South Washington Highway Ashland, VA. 23005</td>
<td>804-365-6622 (V) &amp; 804-365-6639 (F)</td>
</tr>
<tr>
<td>Henrico Area Mental Health &amp; Retardation Services</td>
<td>Counties of Charles City, Henrico &amp; New Kent</td>
</tr>
<tr>
<td>10299 Woodman Road Glen Allen, VA. 23060</td>
<td>804-261-8612 (V) &amp; 804-261-8469 (F)</td>
</tr>
<tr>
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FEDERALLY SUBSIDIZED HOUSING: UNIT-BASED ASSISTANCE AND TENANT-BASED ASSISTANCE

prepared for Central Virginia Legal Aid Society & Legal Aid Justice Center

Pro Bono Housing Law Training – December 2015

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Introduction

Federally subsidized housing issues typically are encountered in State court in the context of an unlawful detainer or other eviction case. Unlike private landlord-tenant cases, federally subsidized landlord-tenant cases are set against a backdrop of extensive federal regulations which determine, among other things, admissions, rents, lease provisions, and in many situations, pre-eviction grievance hearing rights. Some familiarity with the array of federal regulations is needed to understand the underlying issues which may arise in a federally subsidized landlord-tenant eviction case.

Tenants in federally subsidized housing have important legal rights not enjoyed by tenants in private housing:

(1) Landlords’ discretion concerning admission of tenants is limited to some degree.

(2) Many subsidized housing tenants pay only 30% of their income for rent and utilities, and in all cases, the total rent landlords can charge is government regulated.

(3) Usually, subsidized tenancies do not have time limited terms. As long as the tenant does not materially violate the lease or the law, the tenant is entitled to continued occupancy and may be evicted only for good cause.

(4) Subsidized tenants often must be given specific notices of, and the opportunity to have, some type of pre-termination meeting with management or administrative hearing to contest the reasons for admission denial or subsidy termination.

Federally Subsidized Housing: Unit-Based

I. Types of Unit-based Federally Subsidized Housing – Assistance is tied to the housing unit.
A. Public Housing. Conventional public housing is owned and operated by a public housing authority (PHA). The program began with the passage of the Housing Act of 1937, which established a system of public ownership of low income rental housing through state-created housing authorities. See, Code of Virginia §36-1 et. seq. The U.S. Department of Housing and Urban Development (HUD) pays the PHA’s operating expenses over and above tenant rental payments (30% of tenant income) through an Annual Contributions Contract (ACC). See, 42 U.S.C. §1437 et. seq.; 24 C.F.R. Parts 5, 912, 913, 960 and 966.

B. FHA Programs (§221(d)(3) and §236 programs). Both of these programs usually are privately owned, multi-family rental housing insured and subsidized by the Federal Housing Administration (FHA). The §221(d)(3) program began in 1961, and was replaced by the §236 program in 1968. FHA insures and subsidizes the developer’s mortgage, which results in lower interest rates (as low as 1% interest) and operating costs. For the §221(d)(3) program, see, 12 U.S.C. §1713; 24 C.F.R. §221.536. For the §236 program, see, 12 U.S.C. 1715z-1; 24 C.F.R. §236.75 - 236.760. For both, see, 24 C.F.R. §245.247.

C. Farmer’s Home Administration (FmHA) §515 Rural Rental Housing. As with the §221(d)(3) and §236 programs, this program usually is privately owned, multi-family rental housing, with the insurance and subsidy provided by what formerly was called FmHA and now is known as the Rural Housing Service, Rural Economic and Community Development, U.S. Department of Agriculture. This program operates only in rural areas outside of a Standard Metropolitan Statistical Area (SMSA). See, 12 U.S.C. §1485; 7 C.F.R. Part 1930, Subpart C, Exhibit B (Multiple Housing Management Handbook).

D. §8 Unit-based Programs. Section 8 of the Housing and Community Development Act of 1974 created the §8 New Construction, §8 Substantial Rehabilitation, and §8 Moderate Rehabilitation programs. Usually these are privately owned, multi-family rental housing, with the insurance and subsidy provided by HUD. See, 42 U.S.C. §1437f, 24 C.F.R. Parts 880 and 881.

E. Identifying Programs. Usually it is not difficult to identify whether a tenant is a resident of unit-based federally subsidized housing. Most tenants will be aware if their landlord is a housing authority, or if they live in subsidized housing, because they know that their rent is based on their income and that they are subject to recertification requirements. Often, it is more difficult to determine the program under which the tenant is subsidized. There is no systemic way to address this. The following are suggestions:

1. If the lease and notices identify the housing authority as a lessor, the tenant is likely to live in conventional public housing.

2. If the project is private and a subsidy is involved, but the tenant dealt only with the project management in obtaining the unit and the subsidy, then the project is likely to be an FHA, FmHA §515, or §8 Unit-based project. Sometimes these projects can be differentiated by notations on leases and notices, which identify the program involved. The project management should know which program applies, and may be willing to inform the advocate or tenant. The HUD regional office in Richmond, the RECD state and district offices, and the Virginia Housing
Development Authority (VHDA) all maintain lists of the properties they oversee and the programs which apply to each.

F. Common Themes. All these unit-based federally subsidized housing programs have certain things in common. All of them must follow federal regulations about admissions, rents, leases, grievances and evictions.

II. Admissions.

A. Applications. In conventional public housing, applications usually are made at the PHA. See 24 C.F.R. §960.201 et. seq. Other unit-based applications are made at the management office for the project.

B. Waiting Lists. In all programs, the application must be accepted, unless the waiting list is so long there is no reasonable possibility that new applicants will be housed promptly – often defined as within one year.

1. While landlords have some discretion to admit tenants preferentially based on income or preference eligibility, they cannot accept applications only from applicants who fit within certain income ranges or from applicants with certain preference eligibilities.

2. Once an application is accepted, the applicant’s name is entered on a waiting list. At the time of taking the application, the applicant must be advised of the availability of any applicable preferences for admission. The landlord may require applicants on a waiting list periodically to reaffirm interest in admission, and may remove applicants who fail to do so.

3. Program waiting lists usually are kept by number of bedrooms needed, and also may be separated by the existence of validly promulgated local preferences.

4. When a vacancy occurs, the landlord must offer the unit to eligible applicants in the order of bedroom size, preferences, and date & time of application.

C. Mandatory Eligibility Criteria.

1. Income. Income eligibility is limited in all programs. For public housing, FHA, or §8 Unit-based projects, the tenant’s income can be no more than 80% of area median income. See 24 C.F.R. §5.603(b). For FmHA §515 projects, the tenant’s income can be no more than 95% of area median income.

2. Resources. There is no resource eligibility limitation. However, for assets in excess of $5,000, the greater of actual income earned on assets, or a presumed return, is included in income. See 24 C.F.R. §5.609(b)(3).

3. Ability to pay rent. Minimum income requirements cannot be imposed. However, FHA, FmHA §515, and §8 Unit-based landlords may consider objective inability to pay basic subsidized rent, without an additional subsidy, in determining admissions.
4. **Families.** Both single individuals and families are eligible for admission. *See,* 24 C.F.R. §5.403. Some FmHA §515 units are reserved for elderly and handicapped families.

5. **Citizenship.** Only U.S. citizens and eligible immigrants may be admitted. A noncitizen must have eligible immigration status under one of the six categories set forth in 42 U.S.C. §1436a. (*See,* 24 C.F.R. §5.500 *et. seq.* for the implementing regulations.) These are:

   a. Aliens lawfully admitted for permanent residence.

   b. Aliens who entered the U.S. prior to June 30, 1948, have continuously maintained U.S. residence, and are deemed to be lawfully admitted for permanent residence.

   c. Aliens lawfully present pursuant to an admission for asylum.

   d. Aliens lawfully present as a result of the exercise of discretion by the Attorney General for emergent reasons.

   e. Aliens lawfully present as a result of the Attorney General withholding deportation.

   f. Aliens lawfully admitted for temporary residence.

**D. Other Selection Criteria.**

1. PHA’s must have written tenant selection criteria. These written criteria must be posted where applications are taken and copies must be provided upon request. *See,* 24 C.F.R. §960.204. Written criteria are strongly suggested, but not required, for other subsidized landlords.

2. The PHA’s selection criteria must avoid concentration of very low income tenants, must avoid admitting tenants whose habits and practices may be detrimental to other tenants, and must establish reasonable and objective admission policies.

3. Tenant selection criteria shall be reasonably related to individual attributes and behaviors, and shall not be related to attributes and behaviors which may be imputed to groups or categories of persons. *See,* 24 C.F.R. §960.205.

4. The PHA may consider all information relevant to family behavior and suitability for tenancy, including, but not limited to:

   a. Past performance in meeting financial obligations, especially rent.

   b. A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences adversely affecting health, safety or welfare of other tenants.
c. A history of criminal activity involving crimes of physical violence to persons or property, and other criminal acts adversely affecting health, safety or welfare of other tenants.

5. PHA’s and subsidized landlords may not discriminate against an applicant based on having filed bankruptcy or having failed to pay discharged debts. See, 11 U.S.C. §525(a).

6. In the event of receipt of unfavorable information, consideration shall be given to the time, nature and extent of conduct, and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects. (See, 24 C.F.R. 960.205(d).) Examples include:

a. Evidence of rehabilitation.

b. Evidence of participation or willingness to participate in social service and counseling programs, and the availability of such programs.

c. Evidence of willingness to increase income, and the availability of training or employment programs.

E. Preferences. The PHA may adopt a system of local preferences for selection of families admitted to conventional public housing, based on local housing needs and priorities. See, 24 C.F.R. §960.206. These local option preferences include:

1. Preference for working families (head of household, spouse, or sole member is employed), provided this preference is given if head of household and spouse, or sole member, is age 62 or older, or is a disabled person.

2. Preference for families which include a disabled person, provided there is no preference for a person with a specific disability.

3. Preference for families which include victims of domestic violence.

4. Preference for single persons who are elderly (age 62 or older), displaced, homeless or disabled.

5. Residency requirements are prohibited; however, a residency preference is permitted; provided such a preference does not discriminate based on race, religion, national origin, sex, handicap, or age. Applicants who are working, or notified they are hired to work, in a residency preference area, must be treated as residents of the residency preference area. A residency preference must not be based on how long an applicant has lived or worked in a residency preference area.
F. Discrimination. PHA’s and subsidized landlord may not discriminate because of race, religion, national origin, sex, marital status, source of income, handicap, or age (unless it is a project reserved for the elderly or handicapped). See, 24 C.F.R. §6.4.

G. Unit Size Issues. As a general rule, occupancy is based upon two persons per bedroom. However, this rule has many exceptions based on room size, the age and sex of the tenants, and other factors. Within these guidelines, families should be able to choose to some extent the size dwelling they need in light of both family composition and waiting list size. Families with absent members, including children in foster care (but excluding active duty military personnel) must be given a sufficient number of bedrooms to house the entire family. Pregnant women should be given a unit size appropriate for the family after the birth of the child.

H. Denials - Procedure. All applicants whose applications are denied are entitled to prompt written notice of the denial. There is greater procedural protection for applicants denied admission to conventional public housing than to other subsidized housing. See, 24 C.F.R. §960.208.

1. In conventional public housing, the notice of denial must give reasons for the denial and notify the applicant of the right to a hearing and the right to have counsel at the hearing. The hearing requires a decision maker who did not make the initial decision, which must be based solely on the evidence presented at the hearing. There should be a written decision giving reasons for the decision.

2. In FHA and §8 Unit-based projects, rejected applicants generally must be notified in writing of the reasons for the denial and advised of their right to respond in writing or to meet with management if requested within 14 days. The meeting, if any, must be held with someone other than the person who made the decision. A written notice of the landlord’s decision based on the meeting must be provided within 5 days and the notice must inform the applicant of the availability of HUD review of the decision.

3. In FmHA §515 projects, rejected applicants have access to a more formal grievance procedure, as long as they are not clearly ineligible based on required statutory criteria such as income eligibility. See, 7 C.F.R. §1944.551 et. seq.

III. Rents. All tenants in subsidized housing pay a rent less than the rent they would pay for comparable housing on the private market. There are significant differences in the rent obligations of tenants depending upon their type of housing and their subsidy.

A. Conventional Public Housing. Once a year, the PHA must give each family the choice between two methods of determining tenant rent. Except for financial hardship cases, the family may not be offered this choice more than once a year. Regardless of whether the family pays flat rent or income-based rent, the family must pay at least minimum rent.

1. Flat rent. Under this method, rent is based on the market rent charged for comparable units in the private unassisted rental market, and is equal to the estimated rent for which the PHA promptly could lease the unit. See, 24 C.F.R. §960.253(b).
a. The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families attempting to become economically self-sufficient.

b. If a family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

2. Income-based rent. Under this method, tenants pay as their portion of the rent and utilities the higher of 30% of family adjusted monthly income, 10% of family gross monthly income, or that portion of a state welfare grant designated to meet housing costs. (No part of a welfare grant is designated by the Virginia Department of Social Services to meet housing costs.) See, 24 C.F.R. §960.253(c).

a. Annual income is anticipated total income from all sources received by any household member. See, 24 C.F.R. §5.609. It also includes all net income derived from assets, and if net assets exceed $5,000, income can be imputed to those assets at the passbook savings rate.

b. Certain receipts are excluded from income, such as temporary, sporadic or non-recurring income, gifts, medical insurance reimbursements, inheritances, insurance payments for personal or property losses, educational scholarships, earned income of children under 18, foster care payments, Food Stamps, fuel assistance, and other types of income specifically excluded by federal law.

c. Deductions are made from gross annual income to reach adjusted annual income. See, 24 C.F.R. §5.611(a). These are:

1) $480 for each dependent;

2) $400 for any elderly or disabled family (head of household or spouse at least 62 or receives Social Security or SSI disability benefits);

3) the sum of the following, to the extent that the sum exceeds 3% of annual income: (a) unreimbursed medical expenses of any elderly or disabled family, and, (b) unreimbursed reasonable attendant care expenses for each disabled member of the family to the extent necessary to enable any member of the family to be employed.

4) any reasonable child care expenses necessary to enable a member of the family to be employed or further his or her education.

5) any additional deductions which the PHA wishes to adopt by written policy.

d. The adjusted annual income is divided by 12 to reach the net monthly income. The tenant’s rent and utility liability is based on 30% of that figure, except in the
unusual case where 10% of gross monthly income is greater. This is the total monthly tenant payment. See, 24 C.F.R. §5.628.

e. Where all utilities (except phone) are supplied by the PHA, total monthly tenant rent equals total monthly rent payment. Where some or all are not supplied by the PHA, total monthly tenant rent equals total monthly tenant payment minus the monthly utility allowance. See, 24 C.F.R. §5.634.

f. If the tenant pays for utilities, a utility allowance is deducted from the total monthly tenant payment. If the utility allowance exceeds the total monthly tenant payment, the tenant pays no rent and receives a monthly check equal to the amount of the difference. An allowable utility allowance is a reasonable consumption of utilities by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment, and should be in an amount that excess consumption which may result in a surcharge should be reasonably within the control of a tenant or household to avoid. See, 24 C.F.R. §965.501 et. seq. Generally, the utility allowance must be reviewed annually and adjusted to reflect utility rate increases that cumulate to 10% or more. Request for relief from surcharges for excess consumption may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill, or disabled residents. See, 24 C.F.R. §965.508.

B. §8 Unit-based Projects. Income-based rent, as set in conventional public housing, is charged in §8 unit-based projects. See, 24 C.F.R. §§5.634 and 880.201.

C. FHA and FmHA §515 Projects. Tenants in these projects who do not receive any other form of subsidy pay rent at the higher of a “base rent” or 30% of their net income, up to a maximum of the “note rate” or the “market rate.” These rates are set by HUD and RECD based on operating costs.

D. Recertifications and Reporting. To assure that tenants are paying the correct amount of rent and occupy the appropriate unit size, all subsidized housing tenants must undergo regular and interim recertifications of relevant family information. See, 24 C.F.R. §960.257.

1. The family must report changes in family composition and income as may be necessary for the landlord to make determinations with respect to rent, eligibility and unit size. If the landlord receives such information, he must make any adjustment determined to be appropriate.

2. Failure to timely report increases in income or changes in family composition, or false reporting of such information, can be grounds for termination of the tenancy.

3. All increases or decreases in regular income should be reported immediately, but small changes may not lead to changes in tenant rent. For example, RECD regulations only require recertification when income increases by $40 or more per month, or decreases by $20 or more per month.
4. Rent increases become effective the first day of the second month after an increase in income or decrease in deductions. Rent decreases become effective the first day of the month after the events causing a reported decrease in income or increase in deductions.

5. If change in family size require a different unit size, the family must accept a move to an appropriately sized unit if and when offered by the landlord.

6. If the appropriate rent adjustments are not made due to the fault of the tenant, the tenant must repay any underpayments, and is not entitled to any repayment of overpayments. Tenant repayment is unnecessary and tenant refunds are appropriate if the over or underpayments were caused by the landlord after the tenant reported the relevant change in circumstance.

E. Lump Sum Income. With one statutory exception, lump sum payments for the delayed start of periodic payments – including annuities, insurance policies, retirement funds, pensions, disability or death benefits – are considered income. However, a lump sum payment may be counted either as future income to determine future rent, or as back income to determine back rent. In almost all cases, it will be more advantageous to count the lump sum income as back income to determine back rent. A statutory change excludes from income lump sum payments for the delayed start of Social Security disability benefits which otherwise might be included in rental calculations. See, 42 U.S.C. §1437a(b)(4) and 24 C.F.R. §5.609(c)(14).

IV. Leases – The subsidized landlord must have a written lease, which says certain things. Among these things are: the amount of rent, when rent is due, the PHA’s duty to keep the housing decent, the tenant’s rights and duties, the way to handle grievances, and the way to handle evictions.

A. Prohibited Clauses. The following clauses cannot be contained in any subsidized housing lease: 1) waiver of notice of lease termination, 2) distraint for rent and other charges, 3) landlord exculpatory clauses, 4) jury trial waiver, 5) confession of judgment, 6) waiver of legal proceedings, 7) waiver of appeal rights, and 8) tenant chargeable with legal costs regardless of outcome of case. See, 24 C.F.R. §§880.606(b)(2)(ii) and 966.6.

B. Reasonableness. All program leases must be reasonable. As to the reasonableness of lease clauses, see, Richmond Tenants Organization v. Richmond Redevelopment and Housing Authority, 751 F.Supp 1204, 1205 (E.D. Va. 1990), aff’d, 947 F.2d 942 (4th Cir. 1991) (42 U.S.C. §1437d(l)(1) requires lease provisions to be rationally related to a legitimate housing purpose and not overbroad for that purpose). RTO v. RRHA gave broad PHA discretion to formulate reasonable lease provisions to deal with local problems, but invalidated a lease provision making all off-premises criminal behavior grounds for eviction and prohibiting all weapons from units. The court also approved lease clauses providing for: 1) a ten-day notice of transfer to appropriate unit size, 2) a system of citations for trash on premises, 3) 24 hour eviction notices for health & safety violations, 4) evictions for others’ behavior and automatic termination for repeated violations after notice and opportunity to cure, and 5) a ten-day guest limitation without written permission from management.
C. Public Housing. Lease requirements for public housing are set forth at 24 C.F.R. §966.4. Proposed lease revisions must be provided to tenants and tenant organizations for comment at least 30 days before they become effective. The PHA must take tenant comments into consideration in making revisions.

D. FHA and §8 Unit-based Projects. HUD Handbook 4350.3 contains a model lease which must be used in most unit-based §221(d)(3), §236, and §8 projects. Other subsidized housing leases also must be reasonable, and must be approved by FHA, RECD or the PHA. Subsidized housing lease amendments also must be approved by one of these agencies, and tenants must be given at least 30 days notice before they go into effect.

E. FmHA §515 Projects. Lease requirements for FmHA §515 projects are set forth at 7 C.F.R. Part 1930, and project leases also must be approved by RECD on a case by case basis. Changes in FmHA §515 leases also must be approved by the agency and implemented through a prescribed notice procedure. See, 7 C.F.R. Part 1930, Subpart C, Exh. B, ¶VIII(F).

F. Excess Charges. In all programs, landlords are allowed to charge tenants reasonable amounts for additional services or maintenance, which may include late fees, damage and repair charges, utility surcharges, security deposits, and mandatory meals in an elderly project. See, 24 C.F.R. §966.4(b)

G. Security Deposits. In all programs, security deposits are limited by regulation, usually to the higher of a minimal set amount (such as $50.00) or the tenant portion of the rent. In public housing, the PHA may collect the security deposit in up to three monthly installments at the beginning of the lease. See, 24 C.F.R. §966.4(b)(5). All programs must make some provision for joint landlord and tenant move-in and move-out inspections, and landlord retention of a statement of the condition of the premises at the outset of the tenancy.

H. Maintenance. All subsidized landlords have the duty to keep the premises in a decent, safe and sanitary condition. PHA’s must repair all damages to the premises caused by ordinary wear and tear. PHA leases must contain a provision giving the tenant the right to alternative accommodations, if available, or an abatement of rent where the tenant’s unit, without tenant fault, contains conditions hazardous to the life, safety or health of the occupants. See, 24 C.F.R. §966.4(h). Generally, other subsidized housing leases also will contain landlord covenants to keep the premises in good repair, and these covenants are enforceable by tenants under state law.

V. Community Service. Each PHA must develop a local policy for administering the community service and economic self-sufficiency requirements for conventional public housing tenants. See, 24 C.F.R. §960.600 et. seq.

A. General Requirements. Except for exempt individuals, each adult resident of conventional public housing must contribute 8 hours per month of community service, or participate for 8 hours per month in an economic self-sufficiency program, or some combination thereof.
B. Exemptions. Exempt individuals are: (1) 62 years of age or older, (2) blind or disabled, (3) a primary caretaker of a blind or disabled individual, (4) is engaged in work activities, (5) those is exempted from a Welfare-to-Work program, or (6) those engaged in a Welfare-to-Work program. See, 24 C.F.R. §960.601(b).

VI. Grievances. In most, but not all, subsidized housing, a tenant who has a problem with the landlord’s action may ask, in writing, for a grievance hearing. This is held in front of an unbiased person. Under this procedure, the tenant may look at the landlord’s records, have a representative, present evidence, question the landlord’s evidence, and have a written decision.

A. Public Housing. Tenants must be given the opportunity administratively to air their grievances based on the PHA’s acts or failure to act which adversely affect tenant rights. See, 24 C.F.R. §966.50 et. seq.

1. Exclusions. The PHA may exclude from the grievance procedure any grievance concerning a termination of tenancy that involves (a) any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or PHA employees, or (b) any drug-related criminal activity on or near the premises. In addition, the grievance procedure is not applicable to disputes between tenants not involving the PHA or to class grievances. See, 24 C.F.R. §966.51(2)(i).

2. Steps in Procedure.

a. Adverse action. Unless excluded, a tenant may grieve any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant’s lease or PHA regulations which adversely affects the individual tenant’s rights, duties, welfare or status.

b. Informal conference. This must be personally presented, either orally or in writing, to the PHA so the grievance can be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and given to the tenant, with a copy retained in the tenant’s file. The summary shall specify the names of the participants, dates of meeting, nature of the proposed disposition of the complaint and specific reasons therefor, and the procedures by which a hearing may be obtained. See, 24 C.F.R. §966.54.

c. Request for Hearing. This must be requested within a reasonable time after receipt of the summary of the informal conference, and shall specify reasons for the grievance and the action or relief sought. See, 24 C.F.R. §966.55(a).

d. Selection of Hearing Officer/Panel. A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review, or a subordinate of such person. See, 24 C.F.R. §966.55(b).
e. Escrow deposit. In a grievance involving the amount of rent, the tenant must pay rent (including the disputed amount) into escrow; although this must be waived in cases of financial hardship. See, 24 C.F.R. §966.55(e).

f. Hearing rights. The hearing must be scheduled promptly by the hearing officer/panel for a time and place reasonably convenient to both the tenant and the PHA. The tenant shall be afforded a fair hearing, which shall include: opportunity to examine relevant PHA records before the hearing, the right to be represented at the hearing, the right to a private hearing, the right to present evidence and arguments, the right to controvert PHA evidence, the right to confront and cross-examine all PHA witnesses, and a written decision based solely on the evidence. See, 24 C.F.R. §§966.55(f) and 966.56.

g. Hearing conduct. The hearing shall be conducted informally and pertinent evidence may be received without regard to admissibility under rules of evidence applicable to judicial proceedings. See, 24 C.F.R. §966.56(f).

h. Hearing decision. Within a reasonable time after the hearing, the hearing officer/panel shall prepare a written decision with the reasons therefor, which shall be given to the tenant, with a copy retained in the tenant’s file. The decision shall be binding on the PHA, which shall take all actions, or refrain from all actions, necessary to carry out the decision; unless the PHA’s Board of Commissioners determines within a reasonable time that: (a) the grievance does not concern PHA’s action or failure to act in accordance with the individual tenant’s lease or PHA regulations, which adversely affects the individual tenant’s rights, duties, welfare or status, or (b) the decision is contrary to applicable federal, state or local law, HUD regulations, or requirements of the annual contributions contract between HUD and the PHA. See, 24 C.F.R. §966.57.

i. No waiver of tenant’s rights. A decision in favor of the PHA shall not constitute a waiver of, nor affect in any manner whatever, the tenant’s rights to a trial de novo or judicial review in any judicial proceedings brought thereafter. See, 24 C.F.R. §966.57(c).

B. FHA and §8 Unit-based Projects. Tenants in these programs have no formal grievance rights other than those for tenancy termination disputes. In these case, a complaint to HUD sometimes is effective in resolving disputes between the landlord and tenant. There is no formal procedure, but such administrative complaints should be in writing, fully set forth the facts and law related to the dispute, and request that the agency resolve the dispute within a designated reasonable time.

C. FmHA §515 Projects. Tenants in these projects have grievance rights similar to public housing tenants, except that all tenancy termination decisions are excluded from the grievance procedure. Tenants may use the grievance procedure to deal with a number of other issues such as maintenance, security, guests and visitors, and the amount of rent owed, without going to court. See, 7 C.F.R. §1944.551 et. seq.
VII. Evictions – All subsidized housing landlords must have a good reason to evict a tenant, such as not paying rent, not obeying the lease, damaging property, or causing a danger to health or safety.


B. Notice Requirements.

1. Content. A statement of the specific grounds for termination, giving factual bases for the conclusion that termination is warranted, is required. The statements must be sufficient to allow the tenant to prepare a defense. Vague accusations and unsupported references to alleged violations of lease provisions are insufficient. Notices to terminate must include a statement of any right to review the decision, how that right can be exercised, and any time limits on accessing the right to review. Notices to terminate also must state the proposed termination date.

   a. Public housing termination notices also must include notice of the tenant’s right to reply and right to examine relevant documents. If a grievance hearing is not available, the notice must contain a statement as to why it is not, what judicial eviction procedure will be used, and that HUD has approved that procedure as complying with due process. See, 24 C.F.R. §966.4(l)(3). Under state law, public housing termination notices also must advise the tenant of the name, address and telephone number of the legal aid program serving the area. Code of Virginia §55-248.6(D).

   b. Other subsidized housing termination notices also must include statements that the landlord must use court procedures to evict the tenant, that the tenant has the right to present defenses, and that the landlord can rely only on the grounds for eviction stated in the notice, unless the landlord was unaware of those grounds when the notice was served.

   c. FmHA §515 housing regulations provide for a two-step notice process. First, the landlord gives the tenant a notice of lease violation. In addition to a specific statement of the alleged violations, the notice also must: 1) refer to relevant provisions of the lease, 2) state that the tenant or household member will be expected to correct the lease violation by a specific date, 3) advise of the right to meet with the landlord to discuss the matter before the correction date, and 4) that if the violation is not corrected, the owner may bring an eviction action and, in that event, the tenant has the right to present a defense. Second, if the violation is not remedied within the time given in the notice of violation, the landlord must give the tenant a notice of termination. This notice must include: 1) a statement that the tenancy is terminated and that the
landlord will proceed with an eviction action, 2) the reason for the termination, and 3) the location & regular office hours where the tenant can review and copy information in his/her file.

2. **Timeliness.**

   a. **Public housing.** In public housing, notices to terminate based on nonpayment of rent must provide 14 days to pay or quit. When the alleged violation concerns the creation or maintenance of a threat to the health or safety or other tenants or PHA employees, the notice must be given in a reasonable time under the circumstances. In all other cases, including termination for failure to pay excess charges, the public housing tenant must be given 30 days notice. See, 24 C.F.R. §966.4(l)(3).

   b. **Other subsidized housing.** In all other subsidized tenancies, state law controls timeliness of tenancy termination notices. See, Code of Virginia §§55-222, 55-225, & 55-248.31.

C. **Grounds for Termination of Tenancy.** Public and subsidized housing tenancies may be terminated only based on some good cause. See, 24 C.F.R. §966.4(l)(2).

   1. **Good cause requirement.** In all programs, good cause is defined as serious or repeated noncompliance with material lease terms; serious or repeated violation of federal, state or local law placing obligations upon tenants; or other good cause.

      a. Good cause is a factual question.

      b. Emphasis should be placed on serious consequences of the loss of subsidized housing for the tenant. A subsidized housing tenant is “by definition, one of a class who cannot afford acceptable housing so that he is condemned to suffer grievous loss” if that benefit is lost. See, *Caulder v. Durham Housing Authority*, 433 F.2d 988, 1003 (4th Cir. 1970).

      c. Emphasis also should be placed on the need for serious wrongdoing on the part of the tenant, the need for tenant fault, and that the tenant should not be penalized for circumstances beyond the tenant’s control.

      d. If the conduct of guests or other third parties is involved, the tenant should not be evicted for the conduct of others that the tenant could not foresee or control.

      e. Emphasis also should be placed on facts showing the tenant has cured the situation and should be allowed to remain, as well as apparent landlord failures to comply with regulatory procedural requirements.

   2. **Material violation of lease or law.** This generally means: (a) one or more substantial violations of the rental agreement, or (b) repeated minor violations of the rental agreement which disrupt the livability of the project, adversely affect the health or safety of any
person, adversely affect the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project, or have an adverse financial effect on the project.

a. **Rent-related defaults.** Nonpayment of rent is always a material violation of the lease. However, in subsidized tenancies, not all charges may be considered rent. Late charges, premise damage charges, repair assessments, utility surcharges, and other excess charges are not treated as “rent” under any public or subsidized housing program. Therefore, they cannot be asserted as grounds for termination of tenancy for nonpayment of rent, and a longer notice period or opportunity to cure may be required than the 14 day (or 5 day) pay or quit period for nonpayment of rent claims.

1) A defense to an eviction based on nonpayment of rent can be based on landlord’s failure to promptly recertify a tenant after notice of a decrease in income or increase in deductions.

2) Landlord’s failure to receive the government portion of the rent due to landlord’s improper termination of the tenant’s subsidy should be a sufficient defense.

3) Repeated late payment may be grounds for eviction, but not if the late payments are caused by innocent late receipt of income.

4) Like private tenants, public and subsidized housing tenants may assert defenses to rent and possession based on the condition of the premises. However, a condition precedent to the assertion of this defense is that prior to the commencement of the action, the landlord received written notice of the conditions from the tenant or from an appropriate agency, the landlord refused after reasonable opportunity to correct the conditions, and the tenant, if in possession, pays rent found to be due into court. See, Code of Virginia §55-248.25.

b. **Unauthorized residents.** Most public and subsidized housing leases also provide for tenancy termination when the dwelling is used as a residence for persons not listed as household member on the lease. At the same time, tenants have the right to reasonable accommodation of guests and visitors. The differences between a permanent resident and a temporary guest lie along a continuum. There is no bright line. In determining where a set of circumstances falls along that continuum, courts have considered the following factors, among others: the intended length of stay, any monetary payment, moving in belongings such as clothes and furniture, receipt of mail at the tenant’s address, the guest’s regular receipt of other guests at the premises, and whether the alleged resident has an actual place of regular abode other than the tenant’s dwelling.

c. **Failure to comply with reporting requirements.** Proper assessment of tenant rents and occupancy requirements in public and subsidized housing depends on accurate and timely reporting of changes in tenant income or family circumstances. Thus, a tenant’s failure to make such reports accurately or timely can lead to termination of tenancy. Such termination will be justified when inaccurate reporting is due to tenant fraud. However,
negligent failures to report, or to report accurate information, are insufficient for termination or eviction. *See, Ellis v. Ritchie*, 803 F.Supp 1097 (E.D. Va. 1992). The tenant must be shown to have notice of the reporting requirements at issue and the consequences of failure to report.

d. **Poor housekeeping and premise damages.** Tenant housekeeping habits which do not pose a threat to the health or safety of others should not be a grounds for eviction. These type of cases often raise fair housing and Americans with Disabilities Act (ADA) issues of reasonable accommodations of handicaps which make thorough housecleaning and tenant maintenance difficult.

e. **Tenant responsibility for acts of others.** A PHA or subsidized landlord may evict the entire family for criminal or severely disruptive acts of one family member or a guest, but only if the tenant knew or should have known of the possibility that the conduct was occurring or might occur (*i.e.*, the conduct was foreseeable), and failed to do everything reasonably within his/her power to stop it (*i.e.*, the tenant acquiesced to the conduct). Evidence that the wrongdoer was not invited onto the premises by the tenant or household member also has been a successful defense.

f. **Drug and crime cases.** Public housing leases must contain a provision that the tenant shall be obligated to assure that the tenant, any member of the household, a guest, or any other person under the tenant’s control, shall not engage in: (a) any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or PHA employees, or (b) any drug-related criminal activity on or near the premises. Drug-related criminal activity means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use, of a controlled substance. Although drug-related criminal activity is grounds for eviction, HUD and U.S. Justice Department efforts to secure pre-hearing forfeitures of public and subsidized housing leases on premises allegedly used for drug trafficking consistently have been rejected. *See, Richmond Tenants Organization v. Kemp*, (E.D. Va. 1990), *aff’d*, 956 F.2d 1300 (4th Cir. 1992).

1) **Public housing.** In public housing lease terminations, the PHA has discretion to consider all the circumstances of the case, including the seriousness of the offense, the extent of family member participation in the offense, the effect of termination on other family members, the possibility of continuing the subsidy for non-offending family members, excluding only the offending family member from the premises, and continued occupancy upon proof of completion of a treatment program. *See, 24 C.F.R. §966.4(l)(5)(i). These are the same factors that the courts have applied in determining whether a family member or guest’s activities justify termination under the lease provisions. When a PHA evicts an individual for drug-related criminal activity, the PHA shall notify the local post office that such individual no longer resides in the unit. *See, 24 C.F.R. §966.4(l)(5)(ii).*

2) **FHA and §8 Unit-based housing.** Leases must contain a provision providing for eviction for any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises. *See, 42 U.S.C. §1437f(d)(1)(B)(iii) and 24 C.F.R. §880.607(b)(1)(iii).*
3) **FmHA §515 housing.** RECD regulations specifically provide that drug-related crimes are grounds for termination. Unlike HUD’s statutes and regulations, no specific provision is made for violent crimes. See, 7 C.F.R. Part 1930, Subpart C, Exh. B, ¶¶VIII and XIV.

3. **Other good cause.** Regulatory provisions which allow a public or subsidized landlord to terminate a tenancy for other good cause should be viewed as limitations on permissible grounds for termination. Public landlords may not evict for arbitrary, discriminatory, or other manifestly improper reasons. In addition, state law requires prior notice of and an opportunity to cure most grounds for eviction. See, Code of Virginia §55-248.31.

D. **Other Issues in Judicially Litigated Evictions.**

1. **Fair housing defenses.** Fair housing and civil rights laws are fully applicable to all public and subsidized housing tenancies. Both HUD and RECD have the duty to assure nondiscrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d. HUD also has the duty to affirmatively further fair housing under the federal Fair Housing Act, 42 U.S.C. §3608. All these programs also are covered by §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the Americans with Disabilities Act (ADA), which prohibit recipients of federal funds from discriminating against the handicapped.

2. **Waiver.** Continued acceptance of government subsidies can amount to a waiver of the landlord’s right to terminate for a prior breach. See, 1991 Va.A.G. 240 (acceptance of payment for full amount of rent without notice of reservation of right under Code of Virginia §55-248.32 waives breach). A waiver of breach of contract by the tenant also may be implied from the landlord’s repeated acceptance of deviating performance.

3. **First Amendment/Retaliation.** Public and subsidized housing evictions also have been successfully defended on grounds of retaliation and First Amendment rights to free speech. See, *Holt v. Richmond Redevelopment and Housing Authority*, 266 F.Supp 397 (E.D. Va. 1966).

4. **Bankruptcy.** A tenant may be able to stay an eviction and reinstate the lease through bankruptcy. Government entities, including PHA’s, may not discriminate on the basis of a tenant having filed bankruptcy.

5. **Appeal bonds.**

   a. **Non non-payment of rent cases.** Under Code of Virginia §16.1-107

   No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to Code of Virginia §16.1-107. . . . In all civil cases, except
trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents, no indigent person shall be required to post an appeal bond.

In these cases, where non-payment of rent is not the basis for the eviction, bring the federal poverty guidelines to General District Court, ask Judge for permission to take evidence as to indigency, and to waive appeal bond.

May have to ask Circuit Court to waive writ tax and costs. Use Petition for Proceeding in Civil Case Without Payment of Fees or Costs (Form CC-1414).

b. Non-payment of rent cases. Bonds required to appeal a case from General District Court to Circuit Court should be based only on the tenant’s share of the rent. Under all the programs, the landlord will continue to receive any government subsidy as long as the tenant remains in residence, so a bond based on the total rent payment is excessive.

**Federally Subsidized Housing: Tenant-Based**

I. **Program Description**

A. In 1974, Congress enacted §8 of the revised United States Housing Act of 1937 as the primary means for the federal government to provide assistance for low-income housing. See, 42 U.S.C. §1437f. The Housing Choice Voucher Program, as revised and reauthorized in 1998, swallowed up the former §8 Certificate program, and all outstanding certificates were converted to Vouchers. See, Pub L. #105-276, §514 (10/21/98), rewriting 42 U.S.C. §§1437d(c)(4)(A)(I) and 1437f(d)(1)(A).

B. Under the Housing Choice Voucher Program, public housing authorities (PHAs) or any state or local agency authorized to administer §8 tenant-based assistance, apply for Voucher funds from the U.S. Department of Housing and Urban Development (HUD). These §8 agents advertise the program to landlord and tenants, and take applications from tenants to determine eligibility under statutory and HUD guidelines and their administrative plans.

C. Low-income families apply with the §8 agent for assistance. Those determined eligible receive a Voucher or a place on the waiting list. Unlike the former Certificate program, the total tenant contribution for a rental unit (unit + utilities) may be up to 40% of adjusted monthly income at initial lease-up.

D. Once the participant has the Voucher, that person must locate a unit in the private market that meets federal housing quality standards for decent, safe and sanitary housing. See, 42 U.S.C. §1437f(o)(8)(B). When the participant finds both a suitable unit and a willing landlord, the landlord and tenant ask the §8 agent to approve the leasing of the unit under the program. See, 24 C.F.R. §982.302. The §8 agent then determines whether the rent is reasonable, whether the lease conforms to federal requirements, whether the landlord is suitable, and whether the unit meets housing quality standards. See, 24 C.F.R. §982.305.
E. If everything is approved, the landlord and tenant execute the lease, and the §8 agent and landlord enter into a Housing Assistance Payments (HAP) contract. Under the HAP contract, the §8 agent will pay the landlord the difference between the family’s contribution and the approved contract rent, up to the applicable payment standard. See, 24 C.F.R. §982.451.

F. Although for many years landlords could not terminate Voucher tenancies without cause at the end of the lease, in 1998, Congress enacted legislation eliminating this good cause requirement. See, Pub. L. #105-276, §545 (10/21/98). The HAP contract runs for the term of the lease and requires no renewal.

G. When participating in the §8 program, the landlord has the obligation to continue to maintain the housing in conformity with the housing quality standards. The §8 agent has a duty to ensure that the landlord meets these maintenance requirements by inspecting each unit at least annually and more often if a tenant brings specific complaints to the §8 agent. See, 24 C.F.R. §982.405. If, after trying, the §8 agent cannot secure the needed repairs from the landlord, it has the power to suspend or reduce HAP payments. If that does not bring about the needed repairs, the §8 agent may terminate the HAP contract, and if it does, it must issue the family a new Voucher. See, 24 C.F.R. §982.404 & §982.314.

H. The major sources of tenants’ rights under the Voucher program are:

- The Annual Contributions Contract (ACC) between HUD and the §8 agent.
- The HAP contract between the §8 agent and the landlord.
- The lease between the landlord and the tenant.

II. Eligibility

A. Maximum income limits are “low-income” – 80% of area median income (AMI), “very low-income” – 50% of area median income (AMI), and “extremely low-income” – 30% of area median income (AMI). These are available at the HUD website and change annually. See, http://www.huduser.gov/portal/datasets/il/il2015/2015summary.odn. As an illustration, in the Richmond, VA area, for FY 2015:

<table>
<thead>
<tr>
<th></th>
<th>1 person</th>
<th>2 people</th>
<th>3 people</th>
<th>4 people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely low-income (30% of AMI)</td>
<td>$15,600</td>
<td>$17,800</td>
<td>$20,090</td>
<td>$24,250</td>
</tr>
<tr>
<td>Very low-income (50% of AMI)</td>
<td>$26,000</td>
<td>$29,700</td>
<td>$33,400</td>
<td>$37,100</td>
</tr>
<tr>
<td>Low-income (80% of AMI)</td>
<td>$41,550</td>
<td>$47,500</td>
<td>$55,450</td>
<td>$59,350</td>
</tr>
</tbody>
</table>

B. All extremely low-income and very low-income families are eligible. Low-income families must also be continuously assisted, or displaced by certain housing conversion or home ownership programs, or meet additional criteria in the §8 Agency’s Administrative Plan. See, 24 C.F.R. §982.201.
C. There are no limitations on family assets for purposes of eligibility; however, assets may affect income eligibility by their impact on income. If total countable assets exceeds $5,000, amount included in annual income is actual income from the assets, or a HUD-prescribed imputed income, whichever is greater. A household’s disposition of an asset for less than fair market value during the two years prior to admission does not affect eligibility, but does affect the amount of rent the family will pay after admission.

D. Annual income is the family’s gross annual income, not adjusted income. See, 24 C.F.R. §§5.609, 5.653(e), and 960.201(b).

E. Both “single individuals” and “families” are eligible. See, 42 U.S.C. §1437a(b)(3)(A). No federal definition limits a family to individuals who are related by blood, marriage or operation of law. See, 24 C.F.R. §5.403.

F. Although the remaining member of a tenant family usually is eligible for voucher assistance, this is not automatically true in Virginia. See, Carter v. Meadowgreen Associates, 268 Va. 215, 597 S.E.2d 82 (2004).

F. Only citizens and seven categories of non-citizens are eligible:

- Aliens lawfully admitted for permanent residence.
- Aliens who entered the U.S. prior to June 30, 1948, have continuously maintained U.S. residence, and are deemed to be lawfully admitted for permanent residence.
- Aliens lawfully present pursuant to an admission for asylum.
- Aliens lawfully present as a result of the exercise of discretion by the Attorney General for emergent reasons.
- Aliens lawfully present as a result of the Attorney General withholding deportation.
- Aliens lawfully admitted for temporary residence.
- Aliens who are lawful residents under compact between the U.S. and the Marshal Islands, Micronesia and Palau.

III. Preferences

A. Residency requirements are barred. See, 24 C.F.R. §§5.655(c)(1)(i), 960.206(b)(1)(i), and 982.207(b)(1)(i). Residency preferences are permitted, as long as they do not have the purpose or effect of delaying or denying admission based on race, religion, national origin, age, gender or disability. See, 24 C.F.R. §§5.655(c)(1)(v) and 982.207(b)(1)(iv).

B. Preferences may be granted for:

- Working families. See, 24 C.F.R. §§5.655(c)(2) and 982.207(b)(2).
- Elderly, displaced, homeless and disabled. See, 24 C.F.R. §§5.655(c)(5) and 982.207(b)(5).
- Former federal preferences – i.e., persons involuntarily displaced, residents in substandard housing, and persons facing rent overburden paying more than 50% of income for rent. See, 24 C.F.R. §§5.655(c)(5) and 982.207(b)(5).
C. Public housing residents applying for vouchers may not be denied a preference or otherwise excluded merely because they are public housing residents. See, 42 U.S.C. §1437f(s) and 24 C.F.R. §982.207(a)(4).

IV. Targeting Very Low-Income & Extremely Low-Income Applicants

A. The §8 agent must make 75% of the new and turnover vouchers available to extremely low-income (ELI) families. See, 42 U.S.C. §1437n(d) and 24 C.F.R. §982.201(b)(2).

B. The §8 agent must skip over higher-income families to meet voucher targeting requirements. See, 24 C.F.R. §982.207(d).

V. Screening

A. The §8 agent may consider factors such as an applicant’s prior rent paying history, history of disturbance of other tenants or destruction of property, and history of criminal activity. See, 24 C.F.R. §982.307.

B. The §8 agent may not discriminate against families if members are unwed parents, recipients of public assistance, have children born out of wedlock, or are members of a protected class (race, religion, national origin, age, gender or disability). See, 24 C.F.R. §982.202(b)(3).

C. The §8 agent must consider whether a family member is currently engaging in criminal activity or has engaged in criminal activity during a reasonable period of time before issuance of the voucher. See, 24 C.F.R. §982.553(a)(2)(ii).

D. The §8 agent may reject an applicant who has been evicted from federally assisted housing in the past five years. See, 24 C.F.R. §982.552(c)(1)(ii).

E. The §8 agent may reject an applicant who owes a debt to that §8 Agency or any agency administering a federally assisted housing program. See, 24 C.F.R. §982.552(c)(1)(v) and (vi).

F. The §8 agent may reject an applicant who was terminated from the voucher program. See, 24 C.F.R. §982.552(c)(1)(ii).

VI. Unit Size

A. The §8 agent must establish a local policy about the relationship between family size and number of bedrooms, and must balance the limiting of subsidies needed to house a family with avoiding overcrowding. See, 24 C.F.R. §§982.4 and 982.402(b)(1).

B. It is consistent with the Housing Quality Standards to allow for two persons per living room and/or bedroom. See, 24 C.F.R. §982.402(d). However, except for the very young,
children of the opposite sex cannot be required to share a bedroom. See, 24 C.F.R. §982.402(d)(2)(ii).

C. The §8 agent may grant an exception to the local unit size rules if justified by age, sex, health, handicap, relationship of family members or other personal circumstances. See, 24 C.F.R. §982.402(b)(8).

VII. Search Time

A. The §8 agent must grant an initial voucher term of at least 60 days, and has full discretion to increase the initial search time beyond 60 days and may allow for any number of extensions. See, 24 C.F.R. §982.402(b)(8).

B. The voucher holder is not entitled to a hearing upon the §8 agent’s refusal to grant an extension of the voucher search term. See, 24 C.F.R. §982.554(c)(4).

VIII. Eligible Unit

A. Certain units are ineligible for voucher assistance, including units in public housing, unit-based §8 housing, units where the voucher holder owns or has an interest in the unit, or if the unit is owned by a close relative or member of the voucher household. See, 24 C.F.R. §982.352(a).

B. The §8 agent may disqualify a unit because the landlord has violated HUD rules, state or local housing codes, failed to pay state or local taxes, or refused to terminate the tenancy of other federally subsidized tenants who engaged in illegal drug activity or violent criminal activity. See, 24 C.F.R. §982.306(c).

IX. Rent for the Unit

A. There is a limit on the amount of rent that a new participant in the voucher program may pay for the unit, known as the 40% cap.

B. The §8 agent also must determine if the rent for the unit is reasonable

X. Portability & Mobility

A. Voucher holders may use their vouchers nationwide, as long as there is a §8 agent administering a program for the jurisdiction where the unit is located.

B. The §8 agent may restrict portability for up to one year if the family getting the voucher for the first time does not have a legal domicile in the jurisdiction at the time of application. See, 42 U.S.C. §1437f(r)(1)(B)(i) and 24 C.F.R. §982.353(b) & (c).
C. The initial §8 agent must give the family information about portability and how to contact the receiving §8 agent. The initial §8 agent determines screening, preferences and the initial term of the voucher. See, 24 C.F.R. §982.355(c)(6) & (c)(10).

D. The receiving §8 agent determines income-eligibility, unit size, payment standard and the decision to extend the voucher. See, 24 C.F.R. §982.355(c)(6) & (c)(7)

E. The §8 agent must give the family information on how portability works and for those families living in a high poverty census tract, an explanation of the advantages of moving to an area with a low poverty concentration. See, 24 C.F.R. §982.301(a)(3) & (b)(4).

F. The §8 agent may adopt different payment standards for areas within the jurisdiction to improve mobility. See, 24 C.F.R. §982.503(b)(ii) & (e).

XI. **Nondiscrimination Against Voucher Holders**

A. Owners who participate in the low-income housing tax credit (LIHTC) program, the Home Investment Partnerships program (HOME), the §17 Rental Rehabilitation & Redevelopment program, the Housing Development Action Grant (HoDAG) program, Mark-to-Market Restructuring plans, or who purchased HUD-owned developments cannot discriminate against applicants because they are participating in the Voucher program. See, Pub. Law #103-66, §13,142(b)(94) (8/10/93); 42 U.S.C. §12,745(a)(1)(D); 42 U.S.C. §1437o note; 12 U.S.C. §1701z-12.

B. However, in 1998 Congress repealed two statutes that prohibited discrimination against voucher holders by all §8 landlords whose property contained more than four units.

C. Virginia’s Fair Housing Law, Code of Virginia §36-96.1, does not prohibit discrimination on the basis of income status, source of income, or receipt of public assistance.

XII. **Waiting Lists**

A. Because the demand for affordable housing far exceeds the supply, the §8 agent must maintain a waiting list.

B. For the voucher program, the opening and closing of the waiting list is an element of the annual plan submitted to HID, and must state if the waiting list is close, if closed how long it has been closed, and whether it will be opened in the coming year.

C. When opening the waiting list, the §8 agent must give public notice stating where and when to apply, and listing any limitations on who may apply. The notice must be published in a newspaper of general circulation and in minority media. See, 24 C.F.R. §982.206.

D. According to HUD instructions, voucher waiting lists of 12 to 24 months may be reasonable.
E. The §8 agency must include in the Administrative Plan the rules for removing families from the waiting list. See, 24 C.F.R. §982.54. If a notice is sent that an applicant has been removed from the waiting list, a request for informal review must be filed within a reasonable time from the date of notice.

F. If failure to respond to a request for information or an update was due to a family member’s disability, the §8 agent must make a reasonable accommodation and reinstate the family to the former position on the waiting list. See, 24 C.F.R. §982.204(c).

XIII. Tenant Rents

A. Voucher tenants receive a housing subsidy based on the tenant’s income but which is unrelated to the actual rent charged. See, 42 U.S.C. §1437f(o)(2) and 24 C.F.R. §982.1(a)(4)(ii). Voucher landlords may charge any rent, as long as it is reasonable in comparison with rents charged for comparable dwelling units in the private unassisted local market as determined by the §8 agent. The tenant makes up the difference between the contract rent and the maximum subsidy the §8 agent can authorize. Each §8 agent must have a rent reasonableness policy under which it evaluates contract rents. See, 42 U.S.C. §1437f(o)(10)(A) and 24 C.F.R. §§982.4, 982.54(d)(15), 982.158(f)(7) & 982.507.

B. For first time voucher tenants, the contribution toward contract rent and tenant-paid utilities may not exceed 40% of adjusted monthly income, or else the §8 agent cannot approve the lease-up. Tenants who remain in place with a voucher are not subject to a 40% of income limitation where there are subsequent changes in the contract rent. See, 42 U.S.C. §1437f(o)(3) and 24 C.F.R. §§982.305(a) & 982.508.

C. The landlord must notify the §8 agent of any change in the amount of the contract rent at least 60 days before any such changes go into effect. See, 24 C.F.R. §980.308(g)(4). The §8 agent must determine that the rent is “reasonable” in comparison to the rent for comparable unassisted units. See, 24 C.F.R. §§980.308(g)(4) and 982.507(a)(2)(i). If the §8 agent will not approve the rent as “reasonable,” the family cannot rent the unit under the voucher program. It does not matter that the family is willing to pay what the §8 agent will approve and what the landlord wants to charge. However, the §8 agent must offer assistance, where requested by the family, is negotiating a reasonable rent with the landlord. See, 42 U.S.C. §1437f(o)(10)(B) and 24 C.F.R. §982.506.

D. The tenant’s rent subsidy is based on a payment standard, or maximum monthly subsidy payment set by each §8 agent. See, 42 U.S.C. §1437f(o)(1) and 24 C.F.R. §§982.4, 982.503 & 982.508. This is based on, but not necessarily the same as, the §8 fair market rent (FMR) set annually by HUD and effective on October 1 of each year. The FMR usually is set at the 40th percentile of the standard units for the area (excluding public housing, newly built units and substandard units), but may be as high as the 50th percentile.

E. The §8 agent usually sets the payment standard at an amount no less than 90% nor more than 110% of the FMR. The process for setting and revising payment standards must be
set forth in each §8 agency’s annual plan and §8 administrative plan. See, 42 U.S.C. §1437c-1(b)(14) and 24 C.F.R. §§903.7(d) & 982.54(d)(14).

F. The tenant’s contribution toward the subsidized portion of the rent – usually is the difference between the payment standard and 30% of the tenant’s adjusted income. The amount of the payment standard does not vary with the rent charged for the unit. If the contract rent for the unit is greater than the payment standard, the tenant must pay out of pocket to cover the difference, in addition to the normal income-based contribution.

G. To determine the income-based contribution, annual income is determined, and deductions are subtracted to determine adjusted income.

H. Annual income is anticipated total income from all sources received by all household members. It includes, wages, tips, self-employment income, Social Security, SSI, pensions, insurance benefits, unemployment compensation, workers’ compensation, TANF, child support, spousal support, military payments, interest, dividends, and earnings (actual or imputed) from most assets. See, 24 C.F.R. §5.609(b).

I. Annual income does not include any amounts not actually received by the family, but does include all amounts – whether monetary or not – which go to or are on behalf of household members. See, 42 U.S.C. §1437a(b)(4) and 24 C.F.R. §5.609(a)(1).

J. Certain types of income are excluded from annual income for rent-setting purposes, including employment income from children; student loans & all forms of student financial assistance; lump sum additions to family assets such as inheritances, settlements for personal injury or property loss, and retroactive awards of Social Security & SSI; temporary, nonrecurring or sporadic income including gifts; medical insurance reimbursements; foster care payments; Food Stamps; fuel assistance; and other types of income specifically excluded by federal law.

K. Deductions are made from gross annual income to reach adjusted annual income. See, 24 C.F.R. §5.611(a). These are:

1) $480 for each dependent;

2) $400 for any elderly or disabled family (head of household or spouse at least 62 or receives Social Security or SSI disability benefits);

3) any reasonable child care expenses, for care of children under the age of 13, necessary to enable a member of the family to be employed or further his or her education.

4) the sum of the following, to the extent that the sum exceeds 3% of annual income: (a) unreimbursed medical expenses of any elderly or disabled family, and (b) unreimbursed reasonable attendant care expenses for each disabled member of the family to the extent necessary to enable any member of the family to be employed.
L. The adjusted annual income is divided by 12 to reach the net monthly income. The tenant’s rent and utility liability is based on 30% of that figure, except in the unusual case where 10% of gross monthly income is greater. This is the monthly tenant payment. *See*, 42 U.S.C. §1437a(a) and 24 C.F.R. §5.628.

M. Where all utilities (except phone) are supplied by the landlord, monthly tenant contribution equals monthly tenant payment. Where some or all are not supplied by the landlord, monthly tenant contribution equals monthly tenant payment minus the monthly utility allowance. *See*, 24 C.F.R. §5.634.

N. If the tenant pays for utilities, a monthly utility allowance is deducted from the monthly tenant payment. If the monthly utility allowance exceeds the monthly tenant payment, the tenant pays no monthly tenant contribution and receives a monthly check equal to the amount of the difference.

XIV. Utility Allowances

A. The monthly utility allowance must be based on the normal patterns of consumption for the community as a whole and current utility rates. The §8 agent must consider the typical cost of utilities and services paid by energy conservative households that occupy housing of similar size and type in the same locality. It must take into account the unit size, structure type (high-rise, row house, detached unit, etc.), and fuel type. *See*, 24 C.F.R. §982.517(b)(1) & (2).

B. The §8 agent must provide a higher utility allowance as a reasonable accommodation for families that include a disabled member who may require the additional use of utilities, such as heat or air conditioning. *See*, 24 C.F.R. §982.517(e).

C. The §8 agent must review its utility allowance at least annually, and must adjust the utility allowance schedule when there has been a change of 10% or more in utility rates or fuel costs since the last revision. *See*, 24 C.F.R. §982.517(c).

XV. Initial Certification, Annual Recertification and Interim Recertification

A. Voucher tenants must have initial and regular annual certifications of income and family composition. *See*, 24 C.F.R. §982.516. On a one-time basis, the household must supply Social Security numbers and verification of the same for all household members age 6 or older. Similar information is needed if a new household member is added. In addition, on a one-time basis, the household must supply declarations of their status as U.S. citizens, permanent residents, or eligible non-citizens, and verification of the same for all household members. Similar information is needed if a new household member is added.

B. HUD has not established clear requirements for how annual recertification is to be done in the voucher program, but left this up to individual §8 agencies. The recertification process should be set forth in the §8 administrative plan. There also should be written notice to participants of their program responsibilities. *See*, 24 C.F.R. §982.516.
C. To ensure that tenants pay rents commensurate with their ability to pay, as well as to comply with the statutory mandate based on adjusted monthly income, tenants are required to report changes in household income and composition which occur between regularly scheduled recertifications. Again, there are no explicit HUD requirements, and what must be reported is left up to the individual §8 agency.

D. Because most voucher families are not aware of the §8 administrative plan, HUD requires that the §8 agent give written notice to the families of their obligations, including a written description of the grounds on which the §8 agent may deny or terminate assistance because of family action or failure to act. See, 24 C.F.R. §982.552(d)(1) & (2).

1) Failure to timely report increases in income or changes in family composition, or false reporting of such information, can be grounds for termination of the tenancy.

2) All increases or decreases in regular income should be reported immediately, but small changes may not lead to changes in tenant rent.

3) Rent increases become effective the first day of the second month after an increase in income or decrease in deductions. Rent decreases become effective the first day of the month after the events causing a reported decrease in income or increase in deductions.

4) If the appropriate rent adjustments are not made due to the fault of the tenant, the tenant must repay any underpayments, and is not entitled to any repayment of overpayments. Tenant repayment is unnecessary and tenant refunds are appropriate if the over or under-payments were caused by the §8 agent after the tenant reported the relevant change in circumstance.

XVI. Extra Charges

A. Extra items. Voucher landlords may not charge tenants for extra items, such as stoves and refrigerators, that customarily are provided at no additional cost to unsubsidized tenants. See, 24 C.F.R. §983.262(c).

B. Late fees. Voucher leases usually contain a provision where the tenant agrees to pay a given amount as a late fee for the tardy payment of rent. This usually takes the form of a flat charge, regardless of the length of the delinquency. In Virginia, this either is 5% or 10% of the delinquent amount, depending upon the locality.

C. Damage charges. Because the §8 voucher lease addendum, the VRLTA §55-248.13, and Code of Virginia §55-225.3, make the landlord responsible for maintenance, repairs, and damages caused by ordinary wear & tear, tenants are responsible only for reasonable charges for tenant caused damages beyond reasonable wear & tear.

D. Court costs and attorney’s fees. The §8 voucher lease addendum does not specifically set forth prohibited lease clauses, except to the extent the landlord may not charge the tenant
extra amounts not customary in residential landlord-tenant relationships in the locality. In Virginia, lease agreements to pay court costs and attorney’s fees are enforceable.

E. Under the table payments. In the voucher program, the tenant’s contribution is limited to 30% of adjusted income, plus the amount by which the §8 approved “reasonable rent” exceeds the applicable local voucher payment standard. See, 42 U.S.C. §1437a(a)(1) and 24 C.F.R. §982.507(a). Voucher landlords are prohibited from collecting amounts in excess of the tenant’s authorized rent. See, 24 C.F.R. §982.451(b). The §8 agent has no authority to terminate the tenant from the program for making unauthorized payments to the landlord. See, 24 C.F.R. §982.551.

XVII. Security Deposits

A. Voucher landlords are allowed, but not required, to collect security deposits. The §8 agent is allowed, but not required, to prohibit security deposits that exceed private market practice or are greater than the amounts charged to unassisted tenants. See, 24 C.F.R. §982.313. Under the VRLTA, Code of Virginia §55-248.15:1, the security deposit cannot exceed two months rent.

B. The §8 agent must conduct a pre-occupancy inspection of the dwelling unit, prepare a report of the conditions, and retain it in the §8 files for later use in the event of a subsequent landlord claim that the damages were tenant caused. See, 24 C.F.R. §§982.158(d), 982.305(a)(2) and 982.405(a). The §8 agent must notify the tenant of the inspection determination and must inspects units annually. See, 24 C.F.R. §§982.305(d) and 982.405.

C. When the tenant vacates, the landlord must provide the tenant with a written list of any deductions from the security deposit and promptly refund the unused balance. See, 24 C.F.R. §982.313(c); Code of Virginia §55-248.15:1.

D. The landlord may not claim reimbursement for damages from the §8 agent or for any vacancy loss after the tenant has vacated, but must seek to collect the balance from the tenant. See, 24 C.F.R. §982.313(e). Vacancy loss payments no longer are required or allowed. See, 24 C.F.R. §§982.311.

XVIII. Maintenance

A. Voucher landlords may develop their own leases, provided they are in writing, contain certain minimal information, and include the HUD prescribed tenancy addendum. The HUD prescribed tenancy addendum must be attached to every lease, cannot be changed by agreement of the parties, prevails in case of conflict with any other lease provision, and is enforceable against the landlord. See, 24 C.F.R. §982.308.

B. The HUD prescribed tenancy addendum requires the landlord to maintain the property and provide utilities sufficient to comply with the housing quality standards (HQS). See, 24 C.F.R. §982.401. These standards encompass sanitary facilities, food preparation and refuse disposal, space and security, heating and cooling systems, illumination and electricity, structure
and materials, interior air quality, water supply, absence of lead-based paint, access, site and neighborhood, sanitary condition, and smoke detectors.

C. Before approving a lease, the §8 agent must inspect the unit for compliance with HQS. If there are deficiencies to be correct, the §8 agent must notify the landlord of the work to be done. If the landlord takes remedial action, the §8 agent reinspects the units before execution of a HAP contract with the landlord. After initial approval, the §8 agent continually supervises the unit through required annual inspections or special inspections upon complaint. See, 24 C.F.R. §§982.305 and 982.405.

D. If there are serious deficiencies that present an immediate danger to the health and safety of the family (such as lack of heat in the winter), the §8 agent must require the landlord to correct the deficiency within 24 hours. If the deficiencies otherwise violate the HQS, the §8 agent must require the landlord to correct the deficiency within 30 days. See, 24 C.F.R. §982.404(a)(3). If the landlord fails to provide required maintenance or correct deficiencies, the §8 agent must take prompt and vigorous enforcement action, which can include reduction, suspension (abatement) or termination of housing assistance payments or termination of the HAP contract. See, 24 C.F.R. §982.404(a)(2).

E. HUD has clarified the voucher regulations to say that a §8 agent’s withholding of the housing assistance payment does not give the landlord the right to evict the tenant for nonpayment of rent. See, 24 C.F.R. §§982.310(b) & 982.451(b)(4)(iii).

F. Voucher tenants are responsible for HQS violations caused by failure to pay for tenant-paid utilities, failure to provide or maintain any tenant-supplied appliances, and damages beyond ordinary wear and tear caused by any household member or guest. The tenant has 24 hours to correct any life-threatening breach and 30 days to correct others. See, 24 C.F.R. §982.404(b)(2). If the tenant breaches these obligations, the §8 agent can terminate the voucher. See, 24 C.F.R. §§982.404(b)(3) & 982.551(c).

XIX. Leases

A. The HUD voucher regulations do not expressly prohibit unreasonable lease clauses. The Virginia Residential Landlord Tenant Act (VRLTA), Code of Virginia §55-248.9, prohibits the following provisions in leases:

- Agreeing to waive or forego rights or remedies under the VRLTA.
- Agreeing to waive or forego rights or remedies pertaining to the required 120-day conversion or rehabilitation notice.
- Confessing judgment on a claim arising out of the rental agreement.
- Agreeing to pay the landlord’s attorney’s fees except as provided in the VRLTA.
- Agreeing to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith.
- Agreeing as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation.
• Agreeing to a security deposit in excess of two months rent.

B. Voucher landlords may develop their own leases, provided they are in writing, contain certain minimal information, and include the HUD prescribed tenancy addendum. The minimal information includes the names of the parties, the identification of the unit rented, the term of the lease, any renewal provisions, the amount of the monthly rent and a specification of what utilities and appliances are supplied by the landlord and by the tenant. See, 24 C.F.R. §§982.308(d).

C. The HUD prescribed tenancy addendum provides these basic tenant protections:

• The rent is limited to the reasonable rent approved by the §8 agent.
• Charging or collecting other payments from the tenant or any other source is prohibited.
• The tenant is not responsible for the HAP payment and cannot be evicted for nonpayment of the HAP.
• The landlord cannot require the tenant to pay extra for furniture, meals, supportive services, or anything else customarily included in the rent.
• The landlord must maintain the premises and provide utilities sufficient to comply with the housing quality standards.
• The landlord must give 60 days notice to the §8 agent of any rent changes.
• The parties must give each other written notice for any actions under the lease, and agreed changes to the lease must be in writing and provided to the §8 agent.
• During the term of the lease, the landlord may terminate tenancy only for specified good cause, preceded by notice and executed through court action.
• The landlord must provide an itemized list of charges against the security deposit and promptly refund any balance.
• The landlord may not discriminate on the basis of race, religion, national origin, age, gender, familial status, or disability.

D. The HUD prescribed tenancy addendum imposes these basic tenant responsibilities:

• The tenant must promptly report any birth or judicial custody award, and obtain prior written approval from the landlord and the §8 agent of any other additions to the household.
• The tenant must live in the voucher unit and not use it for profit-making activities, unless it is purely incidental.
• The tenant may not sublease, assign or transfer the unit.
• The tenant must pay that portion of the rent not covered by the assistance payment.
• The tenant must notify both the landlord and the §8 agent before vacating the unit.
• The tenant must allow the landlord to collect any balance owing under the lease in excess of the security deposit.
• The parties must give each other written notice for any actions under the lease.
• The lease automatically terminates if the HAP contract or if the §8 agent terminates the voucher.

E. Barred notices. Under Virginia law, to bar a tenant’s guest or invitee, a landlord must
give a notice in compliance with §55-248.31:01. This must be a written notice served personally upon the guest or invitee for conduct on the landlord’s property. The conduct must violate the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice must be served upon the tenant. The notice must describe the conduct of the guest or invitee which is the basis for the landlord’s action. The tenant may file a tenant's assertion, in accordance with Code of Virginia §55-248.27, requesting that the General District Court review the landlord’s action to bar the guest or invitee.

F. Landlord access. Under Virginia law, Code of Virginia §55-248.18, the tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours’ notice of routine maintenance to be performed that has not been requested by the tenant.


H. The Virginia Consumer Protection Act (VCPA), Code of Virginia §59.1-196 et. seq., excludes any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Code of Virginia §55-217 et. seq. or the VRLTA, Code of Virginia §55-248.2 et. seq., unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under §59.1-200.

I. Unconscionability can be used to invalidate or prevent enforcement of shockingly unreasonable lease clauses. Under Virginia law, an inequitable and unconscionable bargain has been defined to be “one that no man in his senses and not under a delusion would make, on the one hand, and as no fair man would accept, on the other.” The inequality must be so gross as to shock the conscience. See, Management Enterprises, Inc. v. Thorncroft Co., 243 VA. 469, 473, 416 S.E.2d 229, 232 (1992), citing, Smyth Brothers v. Beresford, 128 Va. 137, 170, 104 S.E. 371, 382 (1920).

XX. Administrative Procedures – Informal Review & Informal Hearing

A. The voucher program has both an “informal review” process available to aggrieved applicants, and an “informal hearing” process available to aggrieved participants. Under HUD regulations, participants are families who have received a voucher and who have had the §8 agent execute the first HAP contract with a landlord on their behalf. All others are applicants. See, 24 C.F.R. §982.4.
B. Notice to applicant. All applicants whose applications are denied are entitled to prompt written notice of the denial, containing a brief statement of the reasons, that the applicant may request an informal review of the decision, and how to obtain the informal review. See, 24 C.F.R. §982.554.

C. Informal review: when required. Pursuant to 24 C.F.R. §982.552(a)(2), informal review is required in the following cases:

- The applicant is denied a listing on the waiting list (assuming the waiting list is open).
- The applicant is denied a voucher or has a voucher withdrawn.
- The 8 agent refuses to execute a HAP contract or to approve a unit.
- The 8 agent refuses to provide assistance under the portability program.

D. Informal review: when not required. Pursuant to 24 C.F.R. §982.554(c), informal review is not required in the following cases:

- Discretionary administrative determinations.
- General policy issues or class grievances.
- Determination of family unit size.
- Determination not to approve an extension or suspension of a voucher term.
- Determination not to grant approval of the tenancy.
- Determination that a unit does not meet Housing Quality Standards.
- Determination that a unit is not in accordance with Housing Quality Standards because of family size or composition.

E. Informal review: procedures. The review is conducted by an impartial person appointed by the §8 agent, other than a person who made or approved the decision under review, or a subordinate of such person. The applicant must be given the opportunity to present written or oral objections to the decision, and must be notified in writing of the final decision after informal review, including a brief description of the reasons for the final decision.

F. Notice to participant. All families whose housing assistance is terminated are entitled to prompt written notice of the termination, containing a brief statement of the reasons, that the applicant may request an informal hearing on the decision, how to obtain the informal hearing, and the deadline by which to request an informal hearing. See, 24 C.F.R. §982.555.

G. Informal hearing: when required. An informal hearing is required in the following cases:

- Determination of the family’s annual or adjusted income and the use of such income to compute the housing assistance payment.
- Determination of the appropriate utility allowance (if any) for tenant paid utilities from the utility allowance schedule.
- Determination of the family unit size under the subsidy standards.
- Determination that a family is living in a unit with a larger number of bedrooms than appropriate for the family unit size.
- Determination to terminate assistance for a participant family because of the family’s action or failure to act.
- Determination to terminate assistance because the participant family has been absent from the assisted unit longer than the maximum period permitted.

H. Informal hearing: when not required. Pursuant to 24 C.F.R. §982.555(b), an informal hearing is not required in the following cases:

- Discretionary administrative determinations.
- General policy issues or class grievances.
- Establishment of the utility allowance schedule.
- Determination not to approve an extension or suspension of a voucher term.
- Determination not to grant approval of the unit or tenancy.
- Determination that a unit does not meet Housing Quality Standards. However, an informal hearing is available for a decision to terminate assistance for a breach of the HQS alleged to be caused by the family.
- Determination that a unit is not in accordance with Housing Quality Standards because of family size or composition.
- Determination to exercise or not to exercise any right or remedy against the landlord under the HAP contract.


1) Adverse action. Unless excluded, a tenant may request a hearing to dispute any §8 agent decision relating to the individual circumstances of the family and whether it is in accordance with the law, HUD regulations, and §8 agent policies.

2) Selection of Hearing Officer. An informal hearing is conducted by an impartial person designated by the §8 agent, other than a person who made or approved the PHA action under review, or a subordinate of such person. See, 24 C.F.R. §982.555(e)(4)

3) Discovery. The family must be given the opportunity to examine before the hearing any §8 agent documents directly relevant to the hearing. See, 24 C.F.R. §982.555(e)(2).

4) Hearing rights. The family must be given the opportunity to be represented at the hearing, the right to present evidence and arguments, the right to question any witnesses, and a written decision based solely on the evidence. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings. See, 24 C.F.R. §982.555(e)(5).

5) Hearing decision. The hearing officer must issue a written decision stating briefly the reasons for the decision, with factual determinations based on a preponderance of the evidence. See, 24 C.F.R. §982.555(e)(6).
6) Effect of Decision. The decision is binding on the §8 agent, unless: (a) it concerns a matter for which a hearing is not required or that otherwise exceeds the authority of the hearing officer, or (b) it is contrary to HUD regulations or requirements or to federal, state or local law. If the §8 agent determines it is not bound by a hearing decision, it promptly must notify the family of that determination and of the reasons therefor. See, 24 C.F.R. §982.555(f).

XXI. Voucher Termination

A. Grounds for Termination of Assistance. The §8 agent may terminate assistance because of certain kinds of conduct. See, 24 C.F.R. §§982.552 & 553. For all these grounds, except the first four, the §8 agent has discretion to consider circumstances, including the seriousness of the offense, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial on other family members who were not involved in the action or failure.

1) If a family is evicted from housing assisted under the voucher program.

2) If any member of the family fails to sign and submit consent forms for obtaining information.

3) If the family fails to submit required evidence of citizenship or eligible immigrant status.

4) If any member of the family fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education.

5) If the family violates any family obligations under the program, see, 24 C.F.R. §982.551, infra.

6) If any member of the family has been evicted from federally assisted housing in the past five years.

7) If a §8 agent ever has terminated assistance under the program for any member of the family.

8) If any member of the family commits drug-related criminal activity or violent criminal activity. However, the denial may not be based on mere possession of drugs occurring more than one year prior to the decision on the application.

9) If any member of the family has committed fraud, bribery, or other corrupt or criminal act in connection with any federal housing program.

10) If the family currently owes rent or other amounts to any §8 agent.
11) If the family has not reimbursed any §8 agent for amounts paid to a landlord under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

12) If the family breaches an agreement with the §8 agent to pay amounts owed to the §8 agent.

13) If a family participating in the Family Self Sufficiency (FSS) program fails to comply, without good cause, with the family’s FSS contract of participation, see, 24 C.F.R. Part 984.

14) If the family has engaged in or threatened abusive or violent behavior toward personnel of the §8 agent.

15) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

B. Family Obligations. The obligations of a participant family (breaches of which are grounds for termination of assistance) are set forth at 24 C.F.R. §982.551:

1) To supply required recertification information.

2) To establish eligible citizenship or immigration status.

3) To disclose Social Security numbers.

4) To sign consent forms needed to secure wage, income and claim information.

5) To provide true and complete information.

6) Not to cause a breach of the Housing Quality Standards.

7) To allow inspection of the unit by the §8 agent.

8) Not to commit any serious or repeated violation of the lease.

9) To notify the §8 agent and the landlord before moving out or terminating the lease.

10) To give the §8 agent a copy of any landlord eviction notice.

11) To use the assisted unit for residence only by the family.

12) To notify the §8 agent of the birth, adoption or court ordered custody of a child.
13) To obtain approval from the §8 agent to add any other person to the household.

14) To promptly notify the §8 agent if any family member no longer resides in the unit.

15) Not to sublease, assign or transfer the unit.

16) Not to be absent from the unit longer than permitted.

17) Not to own or have any ownership interest in the unit.

18) Not to commit fraud, bribery, or other corrupt or criminal act in connection with the program.

19) Not to engage in any drug-related or violent criminal activity.

20) Not to abuse alcohol in a way that threatens the health, safety, or right of peaceful enjoyment of other residents and persons in the immediate vicinity.

21) Not to receive duplicate assistance.

C. Eviction as grounds for termination of voucher. The landlord’s commencement of the eviction action alone is not grounds to terminate the tenant’s voucher or to stop making the assistance payments. See 24 C.F.R. §§982.311(b) and 982.314(b)(2). Instead, the §8 agent must continue the payments until the eviction has become final because the court has issued a final judgment and all appeal rights have been exhausted.

XXII. Eviction

A. To evict, the landlord must take the tenant to court. During the term of the lease, the landlord must have a reason which is based upon good cause. As with any eviction, landlord must give the tenant a written 5-day pay or quit notice, or a written 30-day notice to vacate, and wait the required notice period, before filing the unlawful detainer action.

B. Procedural Law. The landlord may evict only by instituting court action. Before doing so, the landlord must give the tenant whatever notice is required under state law, and must provide the §8 agent a copy of the notice given to the tenant. The landlord’s failure to comply with the requirement that the eviction notice to the tenant also be sent to the §8 agent provides a procedural defense to the eviction action.

C. Substantive Law. During the term of the lease, the landlord may not terminate the tenancy except on the grounds of:
1) serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease,

2) violation of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises, or

3) other good cause.

D. Drug-related and criminal activity. Pursuant to 24 C.F.R. §982.310(c):

1) The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant’s control, is grounds for the owner to terminate tenancy. The lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

2) The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

   a) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

   b) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

   c) any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.

3) The lease must provide that the owner may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees (or is a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under Federal or State law.

4) The landlord may seek to evict a family for criminal activity by a covered person, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.
E. **Other good cause.** Pursuant to 24 C.F.R. §982.310(d), “other good cause” for termination of tenancy by the landlord may include, but is not limited to:

1) Failure by the family to accept the offer of a new lease or revision;

2) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

3) The landlord’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

4) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

F. During the initial lease term, the landlord may not terminate the tenancy for “other good cause” unless the landlord is terminating the tenancy because of something the family did or failed to do. During this period, the landlord may not terminate the tenancy for “other good cause” based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the landlord’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy.

G. Voucher landlords may terminate the lease without cause at the end of both the initial lease term and any renewal term. See, 42 U.S.C. §§1437f(d)(1)(B) and 1437f(o)(7)(C) & (D) and 24 C.F.R. §982.310.

XXIII. Conclusion

Vouchers have more in common with public benefit programs such as Social Security, unemployment compensation, or workers’ compensation than it does with private landlord-tenant law. Vouchers are heavily regulated, and have many due process protections, and underlying constitutional issues. Because the voucher is indeterminate in length, a case potentially may involve a benefit which is worth tens of thousands of dollars, and may be substantially above the jurisdictional limit of the General District Court. Accordingly, these cases deserve heightened attention from both attorneys and the judiciary.
## APPENDIX I – RICHMOND AREA HOUSING CHOICE VOUCHER AGENCIES

<table>
<thead>
<tr>
<th>Agency</th>
<th>Area served</th>
</tr>
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<tbody>
<tr>
<td>Central Virginia Resource Corporation</td>
<td>Cities of Colonial Heights, Hopewell, Petersburg &amp; Richmond and Counties of Amelia, Caroline, Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent &amp; Powhatan</td>
</tr>
<tr>
<td>4009 FitzHugh Avenue, Suite 100</td>
<td></td>
</tr>
<tr>
<td>Richmond, VA. 23230</td>
<td></td>
</tr>
<tr>
<td>804-353-6503 (V) &amp; 804-353-5606 (F)</td>
<td></td>
</tr>
<tr>
<td>Chesterfield – Colonial Heights Department of Social Services</td>
<td>City of Colonial Heights and County of Chesterfield</td>
</tr>
<tr>
<td>9854 Lori Road, Suite 100</td>
<td></td>
</tr>
<tr>
<td>P.O. Box 430</td>
<td></td>
</tr>
<tr>
<td>Chesterfield, VA. 23832</td>
<td></td>
</tr>
<tr>
<td>804-717-6832 (V) &amp; 804-717-6833 (F)</td>
<td></td>
</tr>
<tr>
<td>Goochland County Department of Social Services</td>
<td>County of Goochland</td>
</tr>
<tr>
<td>1800 Sandy Hook Road, Suite 200</td>
<td></td>
</tr>
<tr>
<td>Goochland, VA. 23063</td>
<td></td>
</tr>
<tr>
<td>804-556-5880 (V) &amp; 804-556-4718 (F)</td>
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<tr>
<td>Hanover Community Services Board</td>
<td>County of Hanover</td>
</tr>
<tr>
<td>12300 South Washington Highway</td>
<td></td>
</tr>
<tr>
<td>Ashland, VA. 23005</td>
<td></td>
</tr>
<tr>
<td>804-365-6622 (V) &amp; 804-365-6639 (F)</td>
<td></td>
</tr>
<tr>
<td>Henrico Area Mental Health &amp; Retardation Services</td>
<td>Counties of Charles City, Henrico &amp; New Kent</td>
</tr>
<tr>
<td>10299 Woodman Road</td>
<td></td>
</tr>
<tr>
<td>Glen Allen, VA. 23060</td>
<td></td>
</tr>
<tr>
<td>804-261-8612 (V) &amp; 804-261-8469 (F)</td>
<td></td>
</tr>
<tr>
<td>Hopewell Redevelopment &amp; Housing Authority</td>
<td>City of Hopewell</td>
</tr>
<tr>
<td>350 East Poythress Street</td>
<td></td>
</tr>
<tr>
<td>Hopewell, VA. 23860</td>
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</tr>
<tr>
<td>804-458-5160 (V) &amp; 804-458-3364 (F)</td>
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<tr>
<td>Petersburg Redevelopment &amp; Housing Authority</td>
<td>City of Petersburg</td>
</tr>
<tr>
<td>128-A Sycamore Street</td>
<td></td>
</tr>
<tr>
<td>Petersburg, VA. 23803</td>
<td></td>
</tr>
<tr>
<td>804-733-2200 (V) &amp; 804-733-2229 (F)</td>
<td></td>
</tr>
<tr>
<td>Prince George Housing Office</td>
<td>County of Prince George</td>
</tr>
<tr>
<td>6400 Administration Drive - P.O. Box 68</td>
<td></td>
</tr>
</tbody>
</table>
Prince George, VA. 23875
804-733-2688 (V) & 804-733-2683 (F)

Richmond Redevelopment & Housing Authority   City of Richmond
901 Chamberlayne Parkway
Richmond, VBA. 23220
804-780-4361 (V) & 804-644-1445 (F)

Richmond Residential Services, Inc.      City of Richmond
1000 North Thompson Street
Richmond, VA. 23220
804-358-2211 (V) & 804-355-6759 (F)
Judicial Procedures

Virginia Procedure in Housing Law
Types of Procedures Legal Aid Attorneys Often Confront:

- Unlawful Detainer Actions
- Warrants in Debt and Motions for Judgment
- Tenant’s Assertions
- Detinue actions
- Injunctions and Declaratory Judgments
A. Unlawful Detainer
Whether the Landlord May Evict the Tenant:

- The plaintiff claims the right to possession and detains real property against a defendant who either detains the property forcefully or who unlawfully retains possession. See § 8.01-124.

- Most residential landlords file unlawful detainer cases in general district court (GDC).
1. Nature and Pre-requisites of the Action

- Maintaining the status quo and avoiding breaches of peace
- Plaintiff must allege and prove that the defendant is unlawfully detaining the premises in derogation of the plaintiff's right to possession
1. Nature and Pre-requisites of the Action (cont.)

- UD filed before the plaintiffs right to possession accrues is prematurely filed and should be dismissed.

- § 8.01-128 will allow a landlord to:
  - obtain a judgment for possession,
  - be issued a writ of possession, and
  - continue the case for up to 90 days. Judgment for possession is immediate appealable. If appealed the entire case is appealed.
2. Filing

- An unlawful detainer is initiated in GDC by filing under oath.

- Taking a default judgment—Plaintiff must file and serve on the defendant:
  - A copy of any document where the landlord notified the tenant of the termination of the tenancy

- The jurisdictional limit of $25,000 shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages or rent. § 16.1-77(3).

- The signature of a party or an attorney
3. Parties, Legal Disabilities, and Permissible Representation

- Suit must be filed in the name of the plaintiff who is entitled to possession of the premises.

- Non-residents of Virginia if renting out 4 or more units must have filed designation of a resident agent. 55-218.1

- UD summons may be filed by plaintiff, resident manager and may obtain default judgment.

- If plaintiff is a corporation or partnership, a non-lawyer may file, but cannot file or argue pleadings or motions or examine witnesses and act as legal counsel in litigation for the landlord.
4. Service of Summons

- Personal service
- Defendant must be served at least 10 days before the return date (unless otherwise agreed by the parties) § 8.01-126.A.
- Defective service fails to give the court personal jurisdiction.
- The court can exercise jurisdiction over a defendant who has actual notice.
5. The Return Date

* The return date is the date listed on the summons for the first appearance of the case on the court’s docket.
(a) Default Judgments

- Defendant or her representative does not appear at the return date, and a request is made in person by the plaintiff, plaintiff may be granted judgment for possession and damages.

- Plaintiff may request judgment for immediate possession if the case arises out of a trustee’s deed following foreclosure and in cases for non-payment of rent or non-remediable terminations.

- Plaintiff must have filed a notice to pay or quit or a notice of termination.
(b) Right to Redeem

- Return date is the last day the tenant has his right to redeem his tenancy by fully compensating the landlord §55-243 and 55-248.34:1

- The tenant may present a redemption tender; a written commitment by a local government or non-profit entity to pay all rent, fees and costs within 10 days of the return date.
(c) Caveat Regarding the Initial Return Date

- Virginia law gives both plaintiffs and defendants the right to a continuance in contested cases.
- The court may also refer the case, or portions of it to mediation.
6. Motions

- Motions docket

- Written motions, not required, but may be helpful.

- If you feel you have an arguable substantive defense, have the case set for trial, request pleadings and do discovery.

- Notice of the intent to argue a motion should be given at least five days before the hearing. Rule 7A:10
7. Venue

- "Category A, or preferred venue" in the jurisdiction in which the real estate is located.

- Venue is not jurisdictional.

- Incorrect venue will not automatically result in the dismissal of the case. §§ 8.01-258, 8.01-264.

- Venue objections are waived unless raised on or before the day of trial.

- If venue is incorrect, a written motion for change of venue, stating the basis for the objection and identifying the correct venue, should be filed. Upon proper objection, transfer is mandatory.
8. Pleadings

- **Filing of pleadings** may be ordered in the court’s discretion, and can be requested by the parties through an oral or written motion.
- **Bill of particulars** sets out in detail why the plaintiff has the right to the relief sought.
- The **grounds of defense** is a written response filed by the defendant.
- Failure to timely file a bill of particulars or grounds of defense can lead to the entry of summary judgment.
- The court may also exclude evidence of matters not raised in the pleadings. Rule 7B:2.
9. Counterclaims

- Counterclaims can (1) raise an affirmative claim for monetary relief; (2) be consolidated in the same pleadings with the grounds of defense; and (3) be severed for trial at the court’s discretion.

- No pleading in response to a counterclaim is required unless ordered by the court.

- $25,000 jurisdictional limit of the general district court.

- No filing fee required.
10. Crossclaims

* A crossclaim is a claim against a fellow defendant in the unlawful detainer action

* No filing fee is required in GDC
subpoena duces tecum is a request for documents to be presented for inspection and copying

What the request should contain:
- a list of the documents and things to be produced,
- a time and place for production, and
- a certificate of service on the other party

Without leave of court, a request must be filed at least 15 days before trial. Rule 7A:12.

Serve copies of the request for a subpoena duces tecum on the other parties. Rule 7A:10
12. Witness Subpoenas

- Must be requested at least 10 days before trial. Rule 7A:12(a)(1).
- Absence of a key witness who has not been subpoenaed will not be grounds for a continuance.
- How to avoid re-subpoenaing witnesses if case is continued.
13. Continuances

- UD case where tenant seeks a continuance the court may order the tenant to pay the rent in escrow.

- If the court finds the tenant has a good faith defense, the tenant will not be required to pay the rent in escrow.

- The court may give the tenant up to one week to make payment of the court-ordered amount.

- The landlord may obtain a judgment for possession and set the case for up to 90 days for a hearing on rent and damages.

- At least 15 days prior to the continuance date, the landlord must mail a notice to the tenant.
14. Trials

- UD cases in GDC are tried like any civil case heard without a jury.
- Principles of law and equity, and when they conflict, equity should prevail.
- The plaintiff has the burden of proof. The defendant has the burden of proof for affirmative defenses.
- Usually the judge announces the decision orally. Sometimes there are written orders.
15. Motions to Rehear or for New Trial

- Must be filed within 30 days and decided within 45 days of entry of the judgment. § 16.1-97.1.

- The court has complete discretion to grant motions to rehear or for a new trial.

- Denial of a motion to rehear is not appealable.
Parties to a GDC case have the absolute right to appeal an order or final judgment of the court to the circuit court of the jurisdiction. § 16.1-106, et seq.

A notice of appeal must be filed in writing within ten days of entry of the order or judgment appealed from.

A jury trial is available §§16.1-113, 16.1-114.1, and 8.01-129

Writ tax and bond within 10 days of entry of the order or judgment

Appeal bond
Bond is usually posted in cash

In all civil cases, except action involving recovering rent, no indigent person shall be required to post a bond. § 16.1-107

An order for rent or damages but not possession ask the court to amend pleadings to warrant in debt.
If the request is granted, it may serve to reduce the bond required and to give your client more time (30 days) to file the fees and bond.
17. Motions to Set Aside Default Judgments

- A default judgment may be set aside for fraud on the court (within two years), if judgment is void (e.g. no service), or an accord and satisfaction. § 8.01-428.

- The court also has equitable power to maintain independent actions to set aside earlier judgments, upon appropriate grounds. § 8.01-428.D.
18. Judgment Executions

- (a) possession of the premises.
- (b) rent, damages, costs, attorney’s fees.
(a) Possession of the Premises

- Writ of possession—must be issued within one year of entry of the judgment for possession
  - Cannot be issued until at least 10 days after the judgment is entered. § 8.01-129. exception: immediate possession.

- Writ is normally carried out by sheriff’s deputy, who has to give 72 hours notice.

- Tenant is usually locked out and has right to remove his property within 24 hours after the eviction.

- No writ shall issue if the landlord accepts rent payment without reservation of rights after the judgment, but before issuance of the writ of possession.

- If the landlord enters into a new lease agreement with a tenant prior to eviction, an order for possession obtained before the new lease agreement is not enforceable. See Va. Code Ann. § 55-248.34:1(B).
(b) Rent, Damages, Costs, Attorney’s Fees

- Awards of rent, damages, costs and attorney’s fees are enforceable through the usual debt collection procedures.

- Poor debtor’s and homestead exemptions apply, and may protect most of a legal aid client’s assets.
B. Warrants in Debt and Complaints.
What Damages the Landlord May Properly Claim Against the Tenant

- Used by landlords as a simple low cost way to establish a judgment for monetary damages. Jurisdiction limit $25,000.00.

- Used by tenants to recover security deposit, damages for violations of the Consumer Protection Act, or for landlord’s wrongful conversion of the tenant’s goods.

- Warrants in Debt vs. Unlawful Detainer; in the former possession not at issue, easier to get a continuance, notice of appeal still needs to be filed within 10 days, but bond needs to be filed within 30 days.
C. Tenant's Assertion and Complaint

• What Tenant Remedies and Defenses are Available

• When a Tenant May Successfully Assert Affirmative Rights Against the Landlord
1. Nature of the Action

* Tenant’s assertion is filed by a tenant in GDC

* The action affirmatively alleges that there are conditions which constitute a material non-compliance with the lease or the law, or which, if not immediately corrected may result in a threat to health of safety.

* Conditions precedent to application for the remedies: written notice to the landlord of the conditions; payment of rent in escrow within five days of the due date.

* Landlord’s defenses: the alleged condition does not exist or has been remedied; condition was caused by tenant or someone under the tenant’s control; tenant has unreasonably refused landlord access to make the repairs.
2. Procedure

- Trial must be held within 15 days of the day of service.

- Tenant cannot take any other action under the VRLTA with regard to this breach.

- Possible remedies: termination of the lease; ordering all escrowed monies to be paid to the tenant; abatement of the rent; disbursing the escrowed monies to pay for the repairs; awarding six months of accumulated escrow to the tenant if the landlord has not made reasonable attempts to remedy the conditions.
Practice Tips for Tenant’s Assertion:

- Get local building inspector’s office, fire marshal’s office or health department involved early and often, and subpoena them and their records to trial.

- Use dramatic photographs as evidence.

- File the case before the landlord files an unlawful detainer action.

- Don’t let the restrictions on the severity of actionable conditions intimidate you.

- Carefully review the statutory conditions and defenses with your client.
D. Detinue
1. Nature of the Action

- An action in detinue may be used by a tenant to recover personal property unlawfully withheld by the landlord or the value of that property.
- Pretrial seizure of property may be authorized.
- A bond must be filed by plaintiff.
- A hearing to review the issuance of the pretrial order.
1. Nature of the Action (cont.)

- The action proceeds as any other action in GDC
- What happens after final judgment for a plaintiff
- Damages
- Detinue is usually used for speedy recovery of secured property upon a defendant’s default in an agreement to repay money lent.
- Tort action in conversion
E. Injunctions and Declaratory Judgments
Injunctions

- The most frequent circuit court action in residential landlord-tenant matters. However, an injunction for an illegal lockout can be brought in GDC. § 55-248.26 and 55-225.2.

- Preliminary injunctions

- Grounds for granting preliminary injunctive relief in Virginia: inadequate remedy at law; irreparable harm if injunction not granted; balancing of the equities; likelihood of success on the merits; and the public interest.

- Indigent tenants should be able to file without paying fees or costs.
If the landlord unlawfully excludes the tenant from the premises or willfully diminishes services, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume the services, recover actual damages and reasonable attorney’s fees.