VIRGINIA LEGAL AID SOCIETY

EVICTIONS
including Lockouts and Utility Shutoffs

Every tenant has the legal right to remain in their rental housing unless and until the landlord follows the legal process for eviction. The process depends on whether your rental housing is covered by the Virginia Residential Landlord Tenant Act (VRLTA).

Generally speaking, the Virginia Residential Landlord Tenant Act, or VRLTA, applies to apartment complexes, regardless of the number of apartments; single-family residences, if the landlord rents out more than two of them in Virginia; and hotels, motels, or boarding houses if the tenant has been renting for more than 90 days or has a written lease for more than 90 days. If your rental is not covered by the VRLTA, there may be other state laws that apply to your situation. If you do not know which law applies, you should seek advice from an attorney.

What type of notice does a landlord have to give to evict?

No matter what the reason, a landlord must give you a written notice in order to evict.

However, you do not have to move just because a landlord has given written notice. The landlord must still follow a legal process, and you have the opportunity to defend against it.

Is a landlord's oral notice to move any good?

No. A landlord's oral notice to move is not good. An oral notice to move should not allow the landlord to start an eviction. You do not have to move just because a landlord has given an oral notice.

What type of notice does a landlord have to give in a non-payment of rent case?

If a landlord wants to evict you for not paying rent, the landlord must give you a written notice to either move or pay rent in 5 days. This is sometimes called a "pay or quit" notice. If you pay the rent in 5 days, you get to stay. If you do not pay, the landlord can start an unlawful detainer action (an eviction) in General District Court (GDC).

What type of notice does a landlord have to give in other cases?

If the landlord wants to terminate a month-to-month lease for a reason other than non-payment of rent, the landlord must give you a written notice to move out in 30 days if the rent is paid each month. If it's paid by the week, then only a 7-day written notice is required. If you do not move by the end of the 30 days (or 7 days, as the case may be), the landlord may start an unlawful detainer action in General District Court.

If your rental is covered by the VRLTA (see first section, above): If the landlord wants to evict you for failure to follow the lease (other than non-payment of rent), or if you have committed a violation that affects health and safety, and if it's a problem that you can correct, then the landlord must give you written notice to correct the problem within 21 days. The notice can say that if you don't correct it within 21 days, then the lease will terminate in 30 days after the date of the written notice. This process is called a "21/30 notice."

If it's a problem that can't be fixed, then the landlord can give you a written notice that the lease will terminate in 30 days. If you do not move out after the 30 days, then the landlord will have to start an unlawful detainer action, and you will have the opportunity to defend against it in court.

What type of notice can a landlord give in an emergency?

In a true emergency, a landlord may give you a written notice to move in less than 30 days. The number of days must be reasonable. The number of days depends on the nature of the emergency. You do not have to move just because the landlord has given you a written notice. The landlord would have to start an unlawful detainer action if you do not move.

I had a one year lease with my landlord. Now, s/he has sold the property and the new owner says I have to leave. What are my rights?

The tenant (lessee) has the same rights against the new owner (grantee) as s/he had against the original owner (grantor). However, the lease would be controlling. Read the lease carefully to see if it says anything about the tenant's rights after the landlord sells the property. If the lease says nothing about a sale of the property, then the VRLTA applies and the tenant has all the rights usually granted by the law and the lease.

It is important to continue to pay your rent on time, to the new owner. If you have any questions about who is the actual landlord, you may send a certified letter to the original landlord (retain a copy for your records) requesting clarification, or you may even want to check the local circuit court to see if the deed is listed in the new owner's name. You should always request a receipt for payment of rent, regardless of to whom it is paid, and you should not withhold rent. Withholding rent entitles the landlord to issue a five day pay or quit instead of giving you a 30 day notice.

If the building I'm renting in ***may be*** foreclosed on, what notice am I entitled to?

This may happen when, even though you and the other tenants are paying your rent to the landlord, the landlord is not current in paying the mortgage on the building. The landlord is required to give you written notice of any of the following: the mortgage is in default, the landlord has received a notice of acceleration of the mortgage (that is, the lender is declaring the whole balance of the mortgage due now), or there's an upcoming sale of the property upon foreclosure. The landlord must give you this

notice within five business days after the landlord has received notice from the lender. If the landlord fails to give you this notice, you may terminate the lease by giving the landlord five days' written notice.

What are the steps in an unlawful detainer action?

A landlord must follow these steps in an unlawful detainer action.

- File a lawsuit in court. The lawsuit may be filed either in General District Court or in Circuit Court. Almost all evictions are filed in General District Court.
- Serve (legally deliver) you a copy of the court papers in a manner allowed by law.
- Go to court at the date and time of your hearing.
- Get a judgment of possession from the court. The landlord may also get a judgment for unpaid rent and other charges at the same time, or may choose to just get a judgment of possession at the first hearing and then continue the case for up to 90 days to establish final rent and damages.
- Get a Writ of Possession from the court. This is the paper that allows the Sheriff to evict you.

How does a landlord file an unlawful detainer?

A landlord starts an unlawful detainer in General District Court by filing a Summons for Unlawful Detainer. Although this court paper is called an "unlawful" detainer, it is not used in a criminal case. It is used only in a civil (non-criminal) case.

How does a landlord serve an unlawful detainer?

An unlawful detainer must be served (legally delivered) on you. This may be done three different ways.

- Given to you in person, usually by a Deputy Sheriff.
- Given to a member of your household, usually by a Deputy Sheriff. The household member must be 16 or older. The person serving the unlawful detainer must explain what it is.
- Posted on your front door and then mailed to you by first class mail.

An unlawful detainer can be legally served on you, even if you never actually get it. If it was properly given to a household member who didn't tell you about it, you still were legally served. If an unlawful detainer was properly posted and mailed to you but you never saw it, you still were legally served. Both these things are unusual, but they do happen. You should tell household members to pay attention to court papers, and you should pay attention yourself.

What do unlawful detainer papers say?

These papers tell you the date, time, and place of your court hearing. The papers also tell you the amount of money the landlord is claiming, such as rent, interest, damages, late fees, attorney's fees and court costs. The hearing may be your only chance to dispute or oppose the eviction and the claim for money. *In all eviction cases, go to the hearing*. Get there early so you can find your courtroom and watch how the court handles other cases.

Do I have to go to the unlawful detainer hearing?

If you don't want to oppose the eviction, you don't have to go to court, but there are good reasons to go anyway. It is in your best interests to always go to court. (You won't be arrested if you do not go to court. That only happens in criminal cases. This is a civil (noncriminal) case.)

If you don't go to court, and the other side does and proves its case, you will lose the eviction case. If you don't go to court and the other side does, the Writ of Possession to allow the Sheriff to evict you can be issued immediately, without the usual 10 day waiting period.

Even if you have no defense to prevent the eviction, you should go to court because it might give you more time to move. Also, if you are in court, you will know about any new court dates, and any additional amounts for damages or rent which the landlord might say you owe.

If you do not go to court for the eviction hearing, the landlord can show up and give the judge either an affidavit (sworn written statement) or oral testimony, concerning the amount of rent you owe as of the date of the hearing. The landlord must tell the judge about any payments you've made that reduce the amount that was due when the eviction process began. If the landlord asks for the full month's rent for

the month in which the hearing is held, then the judge must award the landlord the full rent without pro-rating it for just the amount of time you are still in the rental unit.

So, it is clear that there are good reasons to go to the hearing, even if you think you may not win. You may be able to hold down the amount you're ordered to pay, and you may get more time to move out.

What if I can't go to my unlawful detainer hearing?

If you can't go to General District Court on the date of your unlawful detainer hearing, you must ask the court for a new hearing date. This is called a "continuance." If the landlord requests it, the judge will order you to pay the rent due into a court escrow account as a condition of getting the continuance. However, if the judge determines that you have a good faith defense to the eviction, then the judge will not order that the rent be paid into escrow.

Different General District Courts have different rules for getting a continuance. In some courts, the Clerk can give a continuance. In other courts, only the Judge can give a continuance.

To find out the rule for your court, call the Clerk's Office as soon as you know you can't go to court on the date of your court hearing. Ask to be told the rule to get a continuance, and follow that rule. In addition to calling the Clerk's Office, it's a good idea to write and/or fax a letter to the court explaining why you need a continuance.

What should I do at an unlawful detainer hearing?

If you go to General District Court to dispute or oppose the eviction, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case. If a witness doesn't want to come to court, you can ask the Clerk to subpoena the witness.

A subpoena is a court order that says a witness must come to court. You must pay $12.00 for the subpoena, and you must ask for it at least 10 days before your hearing date. If you don't have enough money to pay this (or any other) fee, ask the Clerk for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This also is called "Form CC-1414."

Do I need a lawyer in General District Court?

You don't need a lawyer in General District Court, but a lawyer can help you. You may have defenses to the eviction.

Can I prevent the eviction if I get the money to pay?

Under either the general law or the VRLTA eviction law, if the only reason the landlord has for evicting is non-payment of rent, you may stay in the rental unit if you pay the following before the date judgment is entered by the court: all the rent and arrearages, other charges and fees as provided in the lease agreement (such as late fees, interest, and attorney fees), and court costs.

You may pay these amounts to your landlord, your landlord's attorney, or the court. If you pay these amounts owed, get a written receipt and take it to court and ask the judge to dismiss your case. You should still attend the court hearing even if you have paid all the amounts owed.

If you do not have all the money that's owed, you may be able to prevent the eviction by getting a written commitment from a local government or nonprofit agency to pay the rent due, plus late charges, attorney fees, and court costs within 10 days of the first date set to appear in court (called the "return date"). This is called a "redemption tender" and it can be given to the court either before or at the return date. The court must then continue (postpone) the hearing for 10 days to allow for the money to be paid to the landlord. If it is paid in full within those 10 days, then the court will dismiss the case and you can stay. If the promised money is not paid in full within those 10 days, however, then the judge will give a judgment to the landlord for immediate possession of the premises, in addition to judgment for all the amounts owed.

If an unlawful detainer is filed, you can prevent eviction only once every 12 months that you continue to live in the same place by paying these amounts owed or by presenting a redemption tender.

Will I owe rent for any time beyond when I'm evicted?

This is usually only going to be a problem if you have a lease that's longer than month-to-month, such as a one-year lease. If you have a lease that's longer than month-to-month and are evicted because you are behind in your rent, the landlord may sue you for all the rent that you owed up until the time of eviction, plus the rent you would have owed until the time the lease was to expire. However, the landlord has a legal duty to try to re-rent the unit after you're out. You cannot be legally required to pay any more rent after the new tenant takes over.

What defenses could I have to the eviction?

Under the VRLTA, you may have defenses. One defense is that the landlord did not keep the place in good shape. To use this defense, you must be current in rent and you must tell the landlord about the problem. You should do this in writing by certified mail to the landlord, before the unlawful detainer is filed. You also must pay rent to court instead of the landlord.

Another defense is that the landlord wants to evict because you complained or used legal rights. To use this defense, the landlord must know that you complained to the landlord or government agency about a rental housing problem or that you joined a tenant's group or sued or testified against the landlord, before the unlawful detainer is filed.

If you think that the amount of money the landlord says you owe is wrong, you should go to court and tell the judge why you think the amount is wrong. Be sure to take your receipts and other proof of your story.

What if I disagree with the judge's decision?

If you believe the judge's decision is wrong, then you can appeal the judgment, but it can be difficult. You have ten days to file the appeal after the judgment was entered. You must pay an appeal bond and court costs. The appeal bond is usually the amount of the judgment entered against you, but it can be as much as one year's rent. If you do not pay the appeal bond, your appeal will not be heard.

An alternative to appealing the judge's decision is to file a Motion for New Trial. You need to file such a motion within 30 days after the judgment. You must have a very good reason for getting a new trial, and it is up to the original trial judge to decide if you'll get one. The judge has some discretion in

whether to give you a new hearing. You may be able to get a new trial, for example, if you didn't get proper notice of the first trial, or if you find new evidence that wasn't available to you at the time of the first trial and that you couldn't have discovered in time to present to the judge.

What happens after the Writ of Possession is issued?

The Sheriff must take the Writ of Possession to your home and serve (legally deliver) the Writ. The Writ must say the date and time after which you will be evicted. The Writ must give you at least 72 hours advance written notice of the date and time the actual eviction will take place.

What does the Sheriff do when evicting a tenant?

Usually, the Sheriff will let you gather up a few personal belongings and then make you leave. The Sheriff then will change the locks, or allow the landlord to change the locks, and give you 24 hours to contact the Sheriff to re-enter the premises and remove the rest of your belongings. If you do not remove your belongings within this 24 hour period, they may be considered abandoned.

What if I make payments to the landlord after the landlord gets an Order of Possession from the court?

Simply making payments to the landlord after the judgment or Order of Possession will not stop the eviction process. The landlord can take the tenant's money and still proceed with eviction (for up to one year after the judgment). You can pay everything you owe after the judgment and be completely current, and your landlord still can evict you (for up to one year after the judgment). There are only two ways to stop this.

(1) If your landlord takes full payment of all rent and other amounts owed after the judgment of possession, your landlord must give you a written notice within five (5) business days accepting your money with reservation. "With reservation" means your landlord is keeping (reserving) the right to evict. If your landlord does not give you this written notice, it may be possible to stop the eviction. If you did not get this notice and still face eviction, get legal help right away!

(2) If you and your landlord enter into a new rental agreement after the judgment of possession. In this case, it may be possible to stop the eviction. Some examples showing a new rental agreement has been entered include these things:

- You and your landlord sign a new lease.
- You receive a new notice of termination of tenancy from your landlord based on something other than non-payment of rent.
- You pay & your landlord accepts rent for a new rental period before the rent is due.

Even then, you should check with both your landlord and the Sheriff to make sure that the eviction has been cancelled. If the eviction is not cancelled, get legal help right away!

Can a landlord lock out a tenant or shut off utilities?

Under either the general landlord tenant-law or the VRLTA, the landlord may not shut off utilities, lock the tenant out of the rental unit, or evict the tenant without giving notice and going to court. You do not have to move out just because the landlord tells you to leave and takes out an unlawful detainer. The landlord must wait until a court order is issued. Any statement in a lease that says you give up (waive) your rights to the court eviction process is not enforceable.

If the landlord locks you out or deliberately fails to supply essential services, such as heat, water, gas or electricity, you should call local law enforcement for help. You may also have grounds to sue in court to recover possession of the property or terminate the lease and owe no more rent. In either case, you can also sue the landlord for damages (for example, the cost of finding alternative house) and can collect attorney fees from the landlord.

If the landlord locks you out or "diminishes" your services, you may get an order from the General District Court to get back possession of your rental unit, including requiring the landlord to restore your services. If you can prove you had other costs and expenses due to being locked out, you can ask the court to order the landlord to pay you those costs. You should go to the clerk of General District Court to file for such an order.

As an alternative, you may sue in Circuit Court to get back into your place (asking for an "injunction"), plus reimbursement for any damages you incurred. It is generally more challenging for a non-lawyer to file in Circuit Court instead of General District Court, however. It is highly recommended that you have an attorney to represent you in Circuit Court, whereas General District Court is easier for non-lawyers to use.

If I have to move out, should I give my landlord my new address?

Yes. If the landlord owes you any security deposit, he will need to know where to send it. Also, if the landlord asks the court for a continuance (another court date) to get judgment for final rent and damages, he will be required to send you notice of the court date and of the amounts he is suing you for at least 15 days before the court date. To be sure you get that notice, you should leave your new address with the landlord. Even if you are afraid the landlord might sue you again, it is better for him to have your address so that you are served notice of the court date and can be in court to present a defense.

THIS INFORMATION IS NOT LEGAL ADVICE. *Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)