

Evictions and Utility Shutoffs

Virginia landlords **cannot** evict their tenants without giving notice and following exact legal rules. That's because a state law, the Virginia Residential Landlord Tenant Act, (VRLTA) protects tenants in:



- Rental units, and
- Hotels, motels, and boarding houses rented for more than 90 days or with a written lease for more than 90 days.

Exception: The VRLTA may not cover every rental. Even if the VRLTA does not cover you, other state laws may cover your situation. A lawyer can give you advice about your particular situation.

Does a landlord have to give me notice before evicting me?



Yes. Landlords must always give a written notice before they can evict. The reason for the eviction doesn't matter.

Do I have to move out when the landlord gives me an eviction notice?

No. There are other steps in the legal process that the landlord must follow before you can be evicted. And you have the right to fight the eviction.

Can a landlord give me notice by just telling me?

No. For it to be legal, the notice must be **in writing**. You do not have to move just because a landlord told you to.

What can happen if I don't pay my rent?

The landlord can give you a written "pay or quit" notice to:

- pay rent within 5 days, or
- move out.

If you pay the rent within 5 days, you can stay. If you do not pay, the landlord can start an eviction case.

Are there other kinds of notices?

Yes. If the eviction is *not* about unpaid rent ...

- and you have a month-to-month lease, at any time, the landlord can give you a **30-day** notice to leave, OR
- you pay rent weekly, at any time the landlord can give you a 7-day notice to leave.

Sometimes the landlord gives you notice for a problem that is correctable, such as:

- not following the rules of the lease (*other than* unpaid rent), or
- a violation that affects health and safety.

If the reason for the notice is something you *can* correct, the landlord must give you a **21/30 notice**.

This notice says you must correct the problem within 21 days, or your lease will end 30 days after the date of the notice.

If it's a problem that *cannot* be corrected, the landlord can give you a notice that says your lease will end in 30 days.

If you do not move out at the end of the notice period, the landlord can start an eviction case in the General District Court (GDC).

Can a landlord give me a notice to evict me *right away*?

If there is a *real* emergency or other threat to health and safety, a landlord may give you a notice to move in less than 30 days. The number of days depends on the kind of emergency. But it *must* be a reasonable number.

You do not have to move just because the landlord gave you a written notice. But if you do not move out, the landlord can start an eviction case in the General District Court (GDC).

I have a 1-year lease. But my landlord sold the property, and the new owner says I have to leave. What are my rights?

It depends on what your lease says. If your lease does not say what happens if the home is sold, you usually have all the same rights you had with the previous landlord, and under the law.

Important! Follow these steps:

- Keep paying your rent on time to the new owner. If you stop paying rent, the landlord can give you a 5-day Pay or Quit Notice.
- If you are not sure who is the actual landlord, send a certified letter to the original landlord to ask. (Keep a copy for your records.) Or ask the local circuit court if the deed lists the new owner's name.
- Always ask for a receipt for your rent payment, no matter who you pay.



What if the home where I rent may get foreclosed?

Even if you and the other tenants pay your rent on time, your landlord may be behind on payments for the home. The law says landlords must give tenants written notice within **5 business days** if *any* of these things happen:

- the mortgage is in default,
- the landlord receives a notice of acceleration of the mortgage (that means the lender demands the balance of the mortgage now), or
- the property is going to be sold because of foreclosure.

If the landlord does not give you notice, you may end your lease by giving the landlord 5 days' written notice.

If the home is sold at foreclosure, the new owner must give you written notice with the name, address, and phone number of where to send the rent. If there is a property management company, you may continue paying the company until you get a notice that gives you different instructions.

Federal law says the new owner **must** give you the *longer* of these 2 options:

- let you stay until your lease ends, or
- give you 90 days' notice to leave.

Exception: If the new owner plans to live at the property, they can give you 90 days' notice even if your lease lasts longer.

What happens if my landlord starts an eviction case in court?

To evict you, your landlord **must** follow these legal steps.

1. If you have a new or renewed written lease after July 1, 2020, provide a Statement of Tenant Rights and Responsibilities that both parties must sign. If not, the landlord cannot file an eviction action for a lease violation.
2. Give you a written Notice.
3. File legal papers, called a *Summons for Unlawful Detainer*, at court. Most cases get filed in General District Court (GDC).
4. Have someone serve (give) you a copy of the court papers.
5. Go to court for the eviction hearing.
6. Show the court a copy of the termination notice you received.
7. Get a judgment of possession. That gives the landlord the right to take back the rental unit. The court may also decide that you must pay the landlord unpaid rent and other charges. Or the landlord can get a judgment of possession and ask the court to decide the final amount due for unpaid rent and damages at another hearing up to 90 days later.
8. Get a Writ of Possession from the Clerk's Office. This paper allows the Sheriff to evict you. A landlord has up to 6 months after the judgment is entered to get the Writ.

Does the landlord have to notify me that he or she started the eviction case?

Yes. Your landlord must have someone serve (give) you a copy of the legal papers. Usually it is by a Deputy Sheriff. There are 3 ways to do this.



- A Deputy Sheriff can give you the papers in person.
- A Deputy Sheriff can give the papers to a member of your household who is 16 or

older. The server must explain what the papers are about.

- A Deputy Sheriff can post the papers on your front door, then mail a copy to you by first class mail.

Because there are different ways to serve, it's possible that you were legally served but didn't know about the eviction case. For example:

- Someone could have served a member of your household who didn't tell you about it, or
- The papers were posted and mailed to you but you never saw them.

Ask household members to pay attention to court papers. You should pay attention, too.

What do the legal papers say?

- The date, time, and place of your court hearing, and
- The amount of money the landlord is asking for, such as rent, late fees, damages or other charges, attorney fees and court costs.

Should I go to the court hearing?

Yes. The hearing may be your only chance to fight the eviction and dispute the landlord's claim for money. Get there early. You will want time to find your courtroom and watch how the court handles other cases.

What happens if I do NOT go to the hearing?

You will NOT get arrested if you don't go. But there are good reasons you should go.

If you go to court, even if you lose your case and get evicted, you may be able to:

- Get more time to stay in your home,
- Lower how much you have to pay the landlord, and
- Hear about any new court dates or additional rent or damages that the landlord might say you owe.

If you do NOT go to court, and your landlord proves his case, you will lose. The information the landlord gives the court about how much money you owe and the rent payments you have made may not be correct. The landlord can even ask for a **full** month's rent for the month of the hearing, even if you leave the home early. You can only dispute these things if you go to the court hearing.

What if I can't go to court on my scheduled hearing date?

If you want to go to court but cannot go on the date scheduled, you must ask the court for a new hearing date. This is called a "continuance."

If you ask to postpone the hearing, the landlord is allowed to ask the court to order you to pay the rent you owe to the court as a condition of postponing the hearing.

Exception: If you have a good faith defense, such as the landlord is charging rent for months you do not owe it, the judge will not order you to pay rent to the court.

Who decides if I can postpone (continue) my hearing?

In some courts, the clerk decides if you can continue your hearing to a new date. In other courts, only the judge can do this.

Contact your court's Clerk's Office as soon as you know you will not be able to go to court on your hearing date. Ask what the rules are for continuing eviction cases. Also, write a letter to the court explaining why you need a continuance.



Get Ready for Court

How can I get ready for the court hearing?

If you want to fight the eviction or the amount of money the landlord says you owe, get prepared before you go to court.

Bring papers, receipts and/or witnesses that support your case.

What if a witness does not want to go to the hearing?

You have the right to ask the Clerk to *make* the witness go to your hearing. The Clerk can issue a subpoena that orders the witness to go to court. You must ask for the subpoena at least 10 days before your hearing date. The subpoena fee is \$12.

What if I can't afford to pay the subpoena fee?

If you can't afford this (or any other) fee, ask the Clerk for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This is called Form CC-1414.

Do I need a lawyer at the hearing?

You don't *need* a lawyer. But it may be helpful. A lawyer may know how to defend against the landlord.

Can I stop the eviction if I pay my rent?

If the *only* reason the landlord is evicting you is *non-payment of rent*, you may stay in the rental unit if you "redeem." Redeem means you pay **all** of the following before the date the court enters the judgment:

- all money requested by the landlord on the court papers, including rent, late fees, damages or other charges, court costs, and any attorney fees.

Who should I pay to stop the eviction?

You may pay your landlord, your landlord's lawyer, or the court. Get a receipt, take it to court and ask the judge to *dismiss* your case. Even if you pay everything you owe before the hearing, and the landlord says you don't have to go, you should still go to the court hearing.

What if I can pay *some* of what I owe, but not all?

You may still be able to stop the eviction. Ask a local government or non-profit agency for help. Many agencies are willing to give you a letter to take to the first court date (called the "return date"). The letter says the agency will help pay the rent due, late fees, court costs, and attorney fees. This is called a "redemption tender."

You can give the letter to the court before or at your hearing. The court must then continue (postpone) the hearing for 10 days. That gives time for you and the agency to pay the landlord.

- If the money is **paid in full** within those 10 days, the court will dismiss the case and you can stay in your rental unit.
- If the money is **NOT paid in full** within those 10 days, the landlord will win. The judge will give a judgment to the landlord for possession of your rental unit, plus a judgment for all the money owed.

Can the landlord make me pay for future rent?

If your lease period ends after the eviction AND the landlord is not able to rent the home out after you leave, the landlord can demand all rent through the end of the lease period. But if a new tenant moves in, you will not have to pay for rent after the date the new tenant moves in.

How can I fight the eviction in court?

You may be able to fight the eviction in court. (This is called “having a defense” that stops the eviction.)

Here are some defenses:

- **The landlord did not keep the place in good shape.** But you must have paid all rent due into an escrow account with the court, and you must have told the landlord about the problem(s) by sending a letter by certified mail.
- **The landlord wants to evict because you complained or used your legal rights.** Before filing the eviction case the landlord knew that you:
 - o complained to the landlord or a government agency about a rental housing problem,
 - o joined a tenant’s group, or
 - o sued or testified against the landlord.
- **The amount of money the landlord says you owe is wrong.** Go to the court hearing. Tell the court why you think the amount is wrong. Take receipts and other proof to support your numbers.

What if I disagree with the court’s decision at the hearing?

There are 2 ways you may be able to ask the court to reconsider your case:

- An appeal, or
- A new trial.

Appeal

You can ask for an appeal if you think the court made the wrong decision about your case. But appeals are difficult. You must pay an appeal bond and court costs. The bond is usually the amount of the judgment against you. You must also pay ongoing rent as it becomes due. If you do not pay these amounts, the court will not hear your appeal.

Deadline: You have **10 days** to file your appeal and pay the appeal bond after the court’s judgment was entered.

New Trial

In some cases, you may be able to ask for a new hearing. For example, you can do this if you were not served correctly or you have new evidence that was not available at the first hearing. The court will decide if you qualify for a new trial. To ask for a new trial, you must file a *Motion for New Trial*.

Deadline: You have **30 days** after the judgment to file the Motion.

What is a Writ of Possession?

A Writ of Possession lists the date and time after which you can be evicted. The Sheriff must personally serve the Writ to your home at least **72 hours** before the date and time listed for the eviction.

What happens when the actual eviction time comes?

Usually the Sheriff comes and lets you take a few personal belongings and then makes you leave. Then the Sheriff or landlord will change the locks. The rest of your belongings may be put out on the street, or the landlord may allow you to store them in the rental unit.

You will have 24 hours to get the rest of your things, or contact the landlord to go back to your unit and get the rest of your things. If you do not remove your belongings within 24 hours, the landlord may legally throw them away.

Can I stop the eviction after getting the Writ of Possession?

There are 3 ways to stop the eviction at this point.

1. If you paid the judgment in full, including all costs, and there were no other grounds to evict, the landlord cannot get a Writ.
2. If the landlord took partial payment and did not give you a notice that reserved the right to evict, the landlord cannot get a writ.
3. Extended Redemption: At least 48 hours before the scheduled eviction, you pay all amounts owed (rent, late fees, damages or other charges, court costs, attorney fees) including a new month's rent if it has come due. You can pay the landlord or the Court.
4. If you and your landlord make a *new* rental agreement *after* the court's decision to evict you (the judgment of possession), you may be able to stop the eviction.

Examples of a new rental agreement include:

- A new lease signed by you and your landlord,
- A new eviction Notice from your landlord not about non-payment of rent, or
- Your landlord accepts your rent payment for a new rental period *before* the rent is due.

Even if any of these things happen, check with your landlord and the Sheriff to make sure the eviction has been cancelled. If it is not cancelled, get legal help right away!

Can a landlord lock me out or shut off my utilities?

Landlords may **not** lock tenants out of their unit or shut off their utilities without getting a court order of eviction *first*. Even if your landlord (or lease) says they can do this, it is against the law.

If your landlord locks you out or shuts off your heat, water, gas or electricity, call local law enforcement for help. They may tell the landlord that this is illegal.

You may be able to sue your landlord to:

- move back into your rental unit and restore any utilities or

- end your lease early without paying more rent, and/or
- sue for damages, including \$5,000 or 4 months' rent, whichever is higher, your actual damages (such as the cost of a hotel room), and attorney's fees.

How to get back into your rental unit

There are two courts that can help you get back into your rental unit:

- The *General District Court* can make a court order, or
- The *Circuit Court* can make an injunction.

If you do not have a lawyer, it's easier to go to the General District Court to ask for a court order to return to your rental unit. You can file a *Tenant's Petition for Relief from Unlawful Exclusion*. The form is at the Clerk's Office.

TIP: There are no forms for this in Circuit Court. You may need a lawyer to help you.

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

Yes. The landlord will need your new address to send you:

- Any security deposit owed to you, and
- Notice of a new court date and the amounts if the landlord asks the court for a judgment for final rent and damages. The landlord must send this notice at least 15 days before the court date. Getting the notice means you have time to get ready to go to court and present your defense.

Free Legal Information



Online: www.vlas.org

Phone: 866-LegalAid (534-5243)

Legal information – not legal advice prepared by Leslie Dodson, Esq., Virginia Legal Aid Society, Farmville, VA.

For advice for your particular situation, talk to a lawyer.

11/3/2022