2017 Code of Virginia Replacement Volume Recommendations

Vol	Title	Subject	Edition	BV pp*	16 CS	%	Lexis*	Replacement Candidates
1	1-2.2	Gen. Prov., Adm. of Govt.	2014	1080	392	36.3%	1184	stand alone
1A	3.2	Agriculture	2016	550	0	0.0%		
1B	4.1-7.1	Alcoholic Bev. -- Boundaries	2016	749	0	0.0%		
2	8.01	Civil Remedies & Procedure	2015	1386	68	4.9%	1380	
2A	8.1-8.11	UCC	2015	1029	12	1.2%		
2B	9-10.1	Commissions -- Conservation	2012	680	178	26.2%	685	
3	11-14.1	Contracts to Corporations	2016	544	0	0.0%	693	
3A	15.2	Counties, Cities, and Towns	2012	1346	295	21.9%	1380	
3B	16.1-17.1	Courts	2015	690	75	10.9%	705	
4	18.2	Crimes	2014	1197	144	12.0%	1254	
4A	19.2	Criminal Procedure	2015	795	87	10.9%	814	
4B	20, 21	Domestic Relations, Drainage	2016	722	0	0.0%		
5	22.1, 23.1	Education -- Eminent Domain	2016	785	0	0.0%	1212	stand alone
5A	24.2-28.2	Elections - Fiduciaries	2016	808	0	0.0%	767	
5B	29.1-32.1	Game to Health	2015	886	145	16.4%	915	
6	33.2-37.2	Highways -- Institutions for the Mentally Ill	2014	866	252	29.1%	946	
6A	38.2	Insurance	2014	1231	129	10.5%	1217	
6B	40.1-45.1	Labor & Employment -- Mines & Mining	2013	655	102	15.6%	673	
7	46.2	Motor Vehicles	2014	1186	344	29.0%	1147	stand alone
7A	47.1 - 53.1	Notaries to Prisons	2013	758	165	21.8%	787	
7B	54.1	Professions	2013	698	282	40.4%	788	
8	55-57	Property -- Religious & Charitable Matters	2012	1203	280	23.3%	1267	2018 Recodification
8A	58.1	Taxation	2013	1181	338	28.6%	1234	stand alone
9	59.1-62.1	Trade -- Waters	2014	1172	192	16.4%	1261	
9A	63.2-67	Welfare -- Youth & Family Services	2012	1552	320	20.6%	1660	stand alone* This volume needs be split as 9A (Titles 63.2 and 64.2) and 9B (Titles 65.2-67).
10		Tables	2015	683	27	4.0%		
11		Rules	2016	n/a	n/a	n/a		
12		Index	2016	n/a	n/a	n/a		
13		Index	2016	n/a	n/a	n/a		
Compacts		Compacts	2010	514	157	30.5%		
Const.		Consts.	2008	296	76	25.7%		
LEO1		LEO/UPL	2002	631	58	9.2%		
LEO2		LEO/UPL	2013	955	74	7.7%		
		*** BV and Lexis page counts do not include prelims.**						

VIRGINIA CODE ANNOTATED

	2017 PRICES						2016 PRICES	
	STATE (6 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE	STATE (4 Replacement Volumes)	PRIVATE	STATE (6 Replacement Volumes)	PRIVATE
SUPPLEMENT	$181.80	$235.00	$191.00	$247.75	$209.00	$278.50	$174.80	$226.00
INDEX	$92.00	$97.25	$ 92.00	$ 97.25	$92.00	$97.25	$ 88.50	$93.50
VOLUMES (EACH)	$49.50	$61.60	$ 49.50	$ 61.60	$49.50	$61.60	$ 47.50	$59.25
VOLUME 11	$37.50	$49.50	$ 37.50	$ 49.50	$37.50	$49.50	$ 36.00	$47.50
VOLUME 11 SUPP	$12.50	$12.50	$12.50	$ 12.50	$12.50	$12.50	$ 12.00	$12.00
ADVANCE CODE SERVICE		$74.75		$ 74.75		$74.75		$72.00
TOTAL	**$620.80**	**$838.60**	**$580.50**	**$789.75**	**$549.00**	**$758.90**	**$596.30**	**$806.50**

(STATE GOVERNMENT PRICING FOR PURCHASES OUTSIDE OF THE CODE COMMISSION PURCHASE)

PPI increase is 6%

2016 Legislation Referred by Committee to Code Commission

Referred by House Courts of Justice	Summary
HB 595 - Simon - Married women; property rights.	Repeals obsolete provisions in the Code of Virginia relating to property rights of married women. The bill retains provisions relating to (i) a spouse's responsibility for the other spouse's contract or tort liability to a third party and (ii) the abolishment of separate estates, by relocating those provisions to appropriate titles in the Code

Referred by House General Laws	Summary
HB 77 - Marshall, R.G. - Sex or gender discrimination; applicable federal law.	Provides that for the purposes of the Virginia Human Rights Act, an "unlawful discriminatory practice" shall not include conduct that violates any federal administrative policy, rule, or regulation adopted on or after January 1, 2012.
HB 179 - Kory - Virginia Human Rights Act; prohibits discrimination in employment.	Prohibits discrimination in private or public employment based on sexual orientation or status as a veteran. Under the Virginia Human Rights Act, such discrimination is actionable if the violating employer has between five and 15 employees. The bill defines "sexual orientation" as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. The bill expressly provides that "sexual orientation" does not include any person's attraction toward persons with whom sexual conduct would be illegal due to the age of the parties. The bill also conforms various provisions prohibiting discrimination in public employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or veteran status. The bill contains technical amendments.
HB 300 - Simon - Virginia Fair Housing Law; unlawful discrimination, definition of sexual orientation, etc.	Adds discrimination based on sexual orientation or gender identity as an unlawful discriminatory housing practice. The bill defines "sexual orientation" and "gender identity."
HB 397 - LaRock - Discrimination; specification of certain terms relating to sex or gender.	Specifies that the terms "because of gender," "because of sex," "on the basis of gender," and "on the basis of sex" and terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly mean because of or on the basis of the biologic character or quality that distinguishes an individual as either male or female as determined at birth by analysis of the individual's gonadal, internal and external morphologic, chromosomal, and hormonal characteristics. The bill provides that, consistent with Article I, Section 11 of the Constitution of Virginia, no local ordinance prohibiting discrimination on

2016 Legislation Referred by Committee to Code Commission

Referred by House General Laws	Summary
	the basis of sex shall consider the mere separation of individuals by sex to be discrimination. The bill permits local school boards to enact policies prohibiting discrimination in education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, marital status, or disability, provided that, consistent with Article I, Section 11 of the Constitution of Virginia, no such policy shall consider the mere separation of individuals by sex to be discrimination.
HB 427 - Hope - Conversion therapy; prohibited, no state funds shall be expended for purpose of therapy.	Prohibits any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions from engaging in conversion therapy with any person under 18 years of age. The bill defines "conversion therapy" as any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity. The bill provides that no state funds shall be expended for the purpose of conducting conversion therapy, referring a person for conversion therapy, extending health benefits coverage for conversion therapy, or awarding a grant or contract to any entity that conducts conversion therapy or refers individuals for conversion therapy.
HB 429 - Villanueva - Virginia Human Rights Act; public employment, prohibited discrimination.	Prohibits discrimination in employment on the basis of sexual orientation. The bill defines "sexual orientation" as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. The bill expressly provides that "sexual orientation" does not include any person's attraction toward persons with whom sexual conduct would be illegal due to the age of the parties. The bill also codifies existing prohibited discrimination in public employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or status as a veteran. The bill contains technical amendments.
HB 913 - Toscano - Discrimination; prohibited in employment and housing.	Prohibits discrimination in private or public employment on the basis of sexual orientation or gender identity. The bill also adds discrimination on the basis of sexual orientation or gender

2016 Legislation Referred by Committee to Code Commission

Referred by House General Laws	Summary
	identity as an unlawful discriminatory housing practice. The bill defines "sexual orientation" and "gender identity." The bill also conforms various provisions prohibiting discrimination in public employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.
HB 1005 - Levine - VA Human Rights Act; public employment, public accommodation, & housing, prohibited discrimination.	Prohibits discrimination in employment and public accommodation on the basis of sexual orientation. The bill defines "sexual orientation" as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. The bill expressly provides that "sexual orientation" does not include any person's attraction toward persons with whom sexual conduct would be illegal due to the age of the parties. The bill also codifies existing prohibited discrimination in public employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or status as a veteran. The bill also adds discrimination based on sexual orientation or gender identity as an unlawful discriminatory housing practice. The bill contains technical amendments.
SB 12 - Ebbin - Public employment; prohibited discrimination based on sexual orientation or gender identity.	Prohibits discrimination in public employment on the basis of sexual orientation or gender identity, as defined in the bill. The bill also codifies for state and local government employment the current prohibitions on discrimination in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or status as a special disabled veteran or other veteran.
SB 67 - Wexton - Virginia Fair Housing Law; unlawful discriminatory housing practices, sexual orientation, etc.	Adds discrimination on the basis of an individual's sexual orientation or gender identity as an unlawful housing practice. The bill also defines sexual orientation and gender identity.

§ 58.1-322 Reorganization Table

Old Cite	New Cite	Notes
58.1-322 (B)	**58.1-322.01**	**Additions**
58.1-322(B)(1)	58.1-322.01(1)	
58.1-322(B)(2)	58.1-322.01(2)	
58.1-322(B)(3)	58.1-322.01(3)	
58.1-322(B)(4)	58.1-322.01(4)	
58.1-322(B)(9)	58.1-322.01(5)	
58.1-322(B)(10)	58.1-322.01(6)	keep reference to "on or after January 1, 2014" because change less than 5 years old
58.1-322(B)(11)	58.1-322.01(7)	Keep reference to "on or after January 1, 2016" because change less than 5 years old
58.1-322(C)	**58.1-322.02**	**Subtractions**
58.1-322(C)(1)	58.1-322.02(1)	
58.1-322(C)(2)	58.1-322.02(2)	
58.1-322(C)(4)	58.1-322.02(3)	
58.1-322(C)(4a)	deleted	obsolete -- good through December 31, 2000
58.1-322(C)(4b)	58.1-322.02(4)	Removed language "For taxable years beginning on or after January 1, 2001"
58.1-322(C)(5)	58.1-322.02(5)	
58.1-322(C)(6)	58.1-322.02(6)	Updated reference from "Targeted Jobs Credit" to "Work Opportunity Credit" per 1996 change in federal law
58.1-322(C)(10)	58.1-322.02(7)	
58.1-322(C)(11)	58.1-322.02(8)	
58.1-322(C)(12)	58.1-322.02(9)	
58.1-322(C)(17)	58.1-322.02(10)	Removed language "For taxable years beginning on or after January 1, 1995"
58.1-322(C)(19)	58.1-322.02(11)	Removed language "For taxable years beginning on or after January 1, 1996"

58.1-322(C)(20)	58.1-322.02(12)	Removed language "For taxable years beginning on or after January 1, 1997"
58.1-322(C)(21)	58.1-322.02(13)	Removed language "For taxable years beginning on or after January 1, 1998"
58.1-322(C)(22)	58.1-322.02(14)	Removed language referencing January 1, 2000, but left in 2015 sunset.
58.1-322(C)(23)	58.1-322.02(15)	Removed language "Effective for all taxable years beginning on or after January 1, 2000"
58.1-322(C)(24)	58.1-322.02(16)	Removed language "Effective for all taxable years beginning on or after January 1, 2000"
58.1-322(C)(25)	58.1-322.02(17)	
58.1-322(C)(26)	58.1-322.02(18)	Removed language "For taxable years beginning on or after January 1, 2001"
58.1-322(C)(27)	deleted	obsolete
58.1-322(C)(28)	58.1-322.02(19)	Removed language "For taxable years beginning on or after January 1, 2000"
58.1-322(C)(31)	58.1-322.02(20)	Removed language "Effective for all taxable years beginning on or after January 1, 2001"
58.1-322(C)(32)	58.1-322.02(21)	Removed language "Effective for all taxable years beginning on or after January 1, 2007"
58.1-322(C)(33)	58.1-322.02(22)	Removed language "For taxable years beginning on or after January 1, 2009"
58.1-322(C)(34)	58.1-322.02(23)	Removed language "For taxable years beginning on or after January 1, 2009"
58.1-322(C)(35)	58.1-322.02(24)	Removed language "For taxable years beginning on or after January 1, 2011"
58.1-322(C)(36)	58.1-322.02(25)	
58.1-322(C)(37)	58.1-322.02(26)	
58.1-322(D)	**58.1-322.03**	**Deductions**
58.1-322(D)(1)	58.1-322.03(1)	Removed language "for taxable years beginning on and after January 1, 2005" in subdivision b

58.1-322(D)(2)	58.1-322.03(2)	Removed language related to $900/prior to January 1, 2005 in subdivision a; removed language "For taxable years beginning on or after January 1, 1987" in subdivision b
58.1-322(D)(3)	58.1-3220.03(3)	
58.1-322(D)(4)	58.1-322.03(4)	
58.1-322(D)(5)	58.1-322.03(5)	Removed reference to "taxable years beginning on and after January 1, 2004" in subdivisions a and b
58.1-322(D)(6)	58.1-322.03(6)	Removed language "For taxable years beginning on and after January 1, 1997"
58.1-322(D)(7)(a)(b)(c)	58.1-322.03(7)(a), (b)	Existing subdivision (b) deleted because obsolete
58.1-322(D)(8)	58.1-322.03(8)	Removed language "For taxable years beginning on and after January 1, 2000"
58.1-322(D)(9)	58.1-322.03(9)	Removed language "For taxable years beginning on and after January 1,1999"
58.1-322(D)(10)	58.1-322.03(10)	Removed language "For taxable years beginning on or after January 1, 2000"
58.1-322(D)(11)	58.1-322.03(11)	Removed language "For taxable years beginning on and after January 1, 2006"
58.1-322(D)(12)	58.1-322.03(12)	Removed language "For taxable years beginning on and after January 1, 2007"
58.1-322(D)(13)	58.1-322.03(13)	Removed language "For taxable years beginning on or after January 1, 2007"
58.1-322(D)(14)	58.1-322.03(14)	
58.1-322(E)	58.01-322.04(1)	
58.1-322(F)	58.1-322.04(2)	
58.1-322(G)	58.1-322.04(3)	Removed language "Effective for taxable years beginning on or after January 1, 2007" in paragraph 1 & 2
58.1-322(H)	58.1-322.04(4)	

SUMMARY

Virginia taxable income of residents; reorganization of additions, subtractions, and deductions. Reorganizes the provisions of the Code of Virginia related to the calculation of Virginia taxable income of residents. Current law sets out the additions, subtractions, deductions, and other modifications in one lengthy section. The reorganization creates four new, smaller sections for additions, subtractions, deductions, and other modifications, respectively, but does not make any substantive changes to the calculation of Virginia taxable income. The bill contains numerous technical amendments.

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 55-556, 55-557, 55-558, 58.1-302, 58.1-315, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-362, 58.1-363, 58.1-391, 58.1-490, 58.1-513, and 58.1-1823 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-322.01 through 58.1-322.04, relating to Virginia taxable income of residents; reorganization of additions, subtractions, deductions, and other modifications.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-556, 55-557, 55-558, 58.1-302, 58.1-315, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-362, 58.1-363, 58.1-391, 58.1-490, 58.1-513, and 58.1-1823 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-322.01 through 58.1-322.04 as follows:

§ 55-556. Claiming first-time home buyer status.

A. The account holder shall be responsible for the use or application of moneys or funds in an account for which the account holder claims first-time home buyer savings account status.

B. The account holder shall (i) not use moneys or funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution; (ii) maintain documentation of the segregation of moneys or funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in the Commonwealth; such documentation may include the settlement statement; (iii) file, with the account holder's Virginia income tax return, forms developed by the Department of Taxation regarding treatment of the account as a first-time home buyer savings account under this chapter, along with the Form 1099 issued by the financial institution for such account; and (iv) remit to the Department of Taxation the tax on any amounts (a) added to individual income pursuant to subdivision ~~B 10~~ 6 of § ~~58.1-322~~ 58.1-322.01 or (b) recaptured pursuant to subdivision ~~C 36~~ 25 of § ~~58.1-322~~ 58.1-322.02.

C. The Tax Commissioner shall develop guidelines applicable to account holders to implement the provisions of this chapter. Such guidelines shall be exempt from the provisions of the Administrative

Process Act (§ 2.2-4000 et seq.). Such guidelines shall not apply to, or impose administrative, reporting, or other obligations or requirements on, financial institutions-related accounts for which first-time home buyer savings account status is claimed by the account holder.

§ 55-557. Tax exemption; conditions.

A. All interest or other income earned attributable to an account shall be excluded from the Virginia taxable income of the account holder as provided under subdivision ~~C 36~~ 25 of § ~~58.1-322~~ 58.1-322.02.

B. There shall be an aggregate limit of $50,000 per account on the amount of principal for which the account holder may claim first-time home buyer savings account status. Only cash and marketable securities may be contributed to an account.

C. Subject to the aggregate limit on the amount of principal that may be contributed to an account pursuant to subsection B, there shall be a limitation of $150,000 on the amount of principal and interest or other income on the principal that may be retained within an account.

D. An account holder shall be subject to Virginia income tax pursuant to subdivision ~~B 10~~ 6 of § ~~58.1-322~~ 58.1-322.01 to the extent of any loss deducted as a capital loss by the individual for federal income tax purposes attributable to the person's account.

E. Upon being furnished proof of the death of the account holder, a financial institution shall distribute the principal and accumulated interest or other income in the account in accordance with the terms of the contract governing the account.

§ 55-558. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.

If moneys or funds are withdrawn from an account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, there shall be imposed a penalty calculated using the Form 1099 showing the amount of income exempted from state income tax and a five percent penalty shall be assessed on the amount of exempted income. The penalty shall be paid to the Department of Taxation. In addition, as provided under subdivision ~~C 36~~ 25 of § ~~58.1-322~~ 58.1-322.02,

the account holder shall also be subject to recapture of income that was subtracted pursuant to that subdivision.

Such five percent penalty shall not apply to, and there shall be no recapture of income with regard to, the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred from an account established pursuant to this chapter into another account established pursuant to this chapter for the benefit of another qualified beneficiary.

§ 58.1-302. Definitions.

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to each other is such that (i) one corporation owns at least 80 percent of the voting stock of the other or others or (ii) at least 80 percent of the voting stock of two or more corporations is owned by the same interests.

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.

"Corporation" includes associations, joint stock companies and insurance companies.

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere. In determining domicile, consideration may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile.

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;

2. Dividends, other than dividends derived from sources within the United States;

3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;

4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and

5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:

a. The ownership of any interest in real or tangible personal property in Virginia;

b. A business, trade, profession or occupation carried on in Virginia; or

c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or paid at a location in Virginia.

2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

"Income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this chapter or any claim for refund of tax. For purposes of the preceding sentence, the preparation for compensation of any portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund. A person shall not be an "income tax return preparer" merely because the person:

1. Furnishes typing, reproducing, or other mechanical assistance;

2. Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed;

3. Prepares as a fiduciary a return or claim for refund for any person; or

4. Prepares an application for correction of an erroneous assessment or a protective claim for refund for a taxpayer in response to any assessment pursuant to § 58.1-1812 issued to the taxpayer or in response to any waiver pursuant to § 58.1-101 or 58.1-220 after the commencement of an audit of the taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

"Individual" means all natural persons whether married or unmarried and fiduciaries acting for natural persons, but not fiduciaries acting for trusts or estates.

"Intangible expenses and costs" means:

1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income;

2. Losses related to or incurred in connection directly or indirectly with factoring transactions or discounting transactions;

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

"Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights and similar types of intangible assets.

"Interest expenses and costs" means amounts directly or indirectly allowed as deductions under § 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in

connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, lease, transfer, or disposition of intangible property.

"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

"Related entity" means:

1. A stockholder who is an individual, or a member of the stockholder's family enumerated in § 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

3. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of § 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of § 318 of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, a component member as defined in § 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code.

"Resident" applies only to natural persons and includes, for the purpose of determining liability for the taxes imposed by this chapter upon the income of any taxable year every person domiciled in Virginia at any time during the taxable year and every other person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in

Virginia or not. The word "resident" shall not include any member of the United States Congress who is domiciled in another state.

"Resident estate or trust" means:

1. The estate of a decedent who at his death was domiciled in the Commonwealth;

2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;

3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or

4. A trust or estate which is being administered in the Commonwealth.

"Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or other disposition of intangible property shall include only the net gain realized from the transaction.

"State," ~~means~~ for purposes of Article 10 ~~of this chapter~~ (§ 58.1-400 et seq.), means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country.

"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.

"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in ~~§ 58.1-322~~ §§ 58.1-322.01, 58.1-322.02, and 58.1-322.04 (including ~~subsection E thereof~~ subdivision 1 of § 58.1-322.04 if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in ~~subsection D of~~ § ~~58.1-322~~ 58.1-322.03, except that the amount of state income taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in ~~subsection D~~ subdivision 7 of § ~~58.1-322,~~ 58.1-322.03 regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

§ 58.1-315. Transitional modifications to Virginia taxable income.

The modifications of Virginia taxable income to be made in accordance with ~~subsection F~~ subdivision 2 of § ~~58.1-322~~ 58.1-322.04 and subsection D of § 58.1-402, so long as applicable, are as follows:

1. There shall be subtracted from Virginia taxable income the amount necessary to prevent the taxation under this chapter of any annuity or of any other amount of income or gain which was properly included in income or gain and was taxable under Articles 1, 2, 3, 4, 5, 6, or 7 (§§ 58-77 through 58-151) of Chapter 4 of Title 58 to the taxpayer prior to the repeal thereof, or to a decedent by reason of whose death the taxpayer acquires the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

2. The carry-back of net operating losses or net capital losses to reduce taxable income of taxable years beginning prior to January 1, 1972, shall not be permitted. Where a taxpayer would have been allowed to deduct an amount as a net operating loss carry-over or net capital loss carry-over in determining taxable income for a taxable year beginning after December 31, 1971, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1972, there shall be added to Virginia taxable income any amount which was actually deducted in determining taxable income as a net operating loss carry-over or net capital loss carry-over and there shall be subtracted from Virginia taxable income the amount which could have been deducted as a net operating loss carry-over or net capital loss carry-over in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

3. There shall be added to Virginia taxable income the amount necessary to prevent the deduction under this chapter of any item which was properly deductible by the taxpayer in determining a tax under §§ 58-77 through 58-151 prior to the repeal thereof.

4. There shall be subtracted from Virginia taxable income that portion of any accumulation distribution which is allocable, under the laws of the United States relating to federal income taxes, to undistributed net income of a trust for any taxable year beginning on or before December 31, 1971. The rules prescribed by such laws of the United States with reference to any such accumulation distribution shall be applied, mutatis mutandis, to allow for this limitation; and, without limiting the generality of the foregoing, the credit provided by § 58.1-370 in the case of accumulation distributions shall in no

instance encompass any part of any tax paid for a taxable year beginning on or before December 31, 1971.

5. As to gain or loss attributable to the sale or exchange of nondepreciable property, Virginia taxable income shall be adjusted to effect a reduction in such gain or increase in such loss by the amount by which the adjusted basis of such property, determined for Virginia income tax purposes at the close of the taxable period immediately preceding the first taxable period to which Articles 7.1 to 7.6 (§ 58-151.01 et seq.) of Title 58 applied prior to repeal thereof exceeds the adjusted basis of such property for federal income tax purposes determined at the close of the same period.

6. There shall be subtracted from the Virginia taxable income of a shareholder of an electing small business corporation any amount included in his taxable income as his share of the undistributed taxable income of such corporation for any year of the corporation beginning before January 1, 1972.

7. There shall be subtracted from federal taxable income amounts which would have been deductible by the corporation in computing federal taxable income but for the election of such corporation of the additional investment tax credit under § 46(a)(2)(B) of the Internal Revenue Code in effect on January 1, 1978.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed by:

1. A single individual where the Virginia adjusted gross income for such taxable year is less than $5,000 for taxable years beginning on and after January 1, 1987, but before January 1, 2004.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than $5,000 for taxable years beginning on and after January 1, 2004, but before January 1, 2005.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than $7,000 for taxable years beginning on and after January 1, 2005, but before January 1, 2008.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than $11,250 for taxable years beginning on and after January 1, 2008, but before January 1, 2010.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than $11,650 for taxable years beginning on and after January 1, 2010, but before January 1, 2012.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than $11,950 for taxable years beginning on and after January 1, 2012.

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than $8,000 for taxable years beginning on and after January 1, 1987, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2004.

An individual and spouse if their combined Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 is less than $8,000 for taxable years beginning on and after January 1, 2004, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2005; less than $14,000 for taxable years beginning on and after January 1, 2005, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2008; less than $22,500 for taxable years beginning on and after January 1, 2008, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2010; less than $23,300 for taxable years beginning on and after January 1, 2010, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2012; and less than $23,900 for taxable years beginning on and after January 1, 2012, (or one-half of such amount in the case of a married individual filing a separate return).

For the purposes of this section, "Virginia adjusted gross income" means federal adjusted gross income for the taxable years with the modifications specified in ~~§ 58.1-322 B, § 58.1-322 C and the additional deductions allowed under § 58.1-322 D 2 b and D 5 for taxable years beginning before January 1, 2004~~ §§ 58.1-322.01 and 58.1-322.02. ~~For taxable years beginning on and after January 1,~~

~~2004, Virginia adjusted gross income means federal adjusted gross income with the modifications specified in subsections B and C of § 58.1-322.~~

B. Persons in the armed forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation received from military or naval service.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in ~~this section~~ §§ 58.1-322.01 through 58.1-322.04.

~~B. To the extent excluded from federal adjusted gross income, there shall be added:~~

~~1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;~~

~~2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;~~

~~3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;~~

~~4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;~~

~~5 through 8. [Repealed.]~~

~~9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;~~

~~10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555; and~~

~~11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.~~

~~C. To the extent included in federal adjusted gross income, there shall be subtracted:~~

~~1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.~~

~~2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the Commonwealth.~~

~~3. [Repealed.]~~

~~4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.~~

~~4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.~~

~~4b. For taxable years beginning on or after January 1, 2001, up to $20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.~~

~~5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.~~

~~6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.~~

~~7, 8. [Repealed.]~~

~~9. [Expired.]~~

~~10. Any amount included therein less than $600 from a prize awarded by the Virginia Lottery.~~

~~11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or $3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.~~

~~12. Amounts received by an individual, not to exceed $1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.~~

~~13. [Repealed.]~~

~~14. [Expired.]~~

~~15, 16. [Repealed.]~~

~~17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.~~

~~18. [Repealed.]~~

~~19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.~~

~~20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.~~

~~21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.~~

~~22. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.~~

~~23. Effective for all taxable years beginning on or after January 1, 2000, $15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's~~

~~military basic pay exceeds $15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds $30,000.~~

~~24. Effective for all taxable years beginning on and after January 1, 2000, the first $15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is $15,000 or less.~~

~~25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.~~

~~26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.~~

~~27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement, " as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.~~

~~28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.~~

~~"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of~~

any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29, 30. [Repealed.]

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the

~~Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.~~

~~35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business, " as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020 No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.~~

~~36. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.~~

~~Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.~~

~~However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.~~

~~For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.~~

~~37. For taxable years beginning on or after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.~~

~~D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:~~

~~1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or~~

~~b. Three thousand dollars for single individuals and $6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.~~

~~2. a. A deduction in the amount of $900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and $930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.~~

~~b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of $800.~~

~~The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.~~

~~3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.~~

~~4. An additional $1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.~~

~~5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born on or before January 1, 1939.~~

~~b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by $1 for every $1 that the taxpayer's adjusted federal adjusted gross income exceeds $50,000 for single taxpayers or $75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by $1 for every $1 the total combined adjusted federal adjusted gross income of both spouses exceeds $75,000.~~

~~For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.~~

~~6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.~~

~~7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to $4, 000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds $4, 000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed $4, 000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.~~

~~b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.~~

~~c. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed $4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.~~

~~8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.~~

~~9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.~~

~~10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.~~

~~11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:~~

~~a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.~~

~~b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.~~

~~12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed $500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.~~

~~13. For taxable years beginning on or after January 1, 2007, the lesser of $5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.~~

~~14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or older with earned income of at least $20,000 for the year and federal adjusted gross income not in excess of $30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. "Earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.~~

~~E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.~~

~~F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.~~

~~G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).~~

~~Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of~~

~~an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).~~

~~H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).~~

§ 58.1-322.01. Virginia taxable income; additions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party.

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes.

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code.

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code.

5. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

6. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555.

7. For taxable years beginning on and after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

§ 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States, including, but not limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4. Up to $20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7. Any amount included therein less than $600 from a prize awarded by the Virginia Lottery.

8. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or $3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified in this subdivision.

9. Amounts received by an individual, not to exceed $1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual

retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount by which the taxpayer's military basic pay exceeds $15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds $30,000.

16. The first $15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is $15,000 or less.

17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

18. Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from, hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

As used in this subdivision:

"Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath, (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution, or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath.

20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the

subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

21. The death benefit payments from an annuity contract that are received by a beneficiary of such contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

22. Any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business, " as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided that the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such

person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

26. For taxable years beginning on and after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

§ 58.1-322.03. Virginia taxable income; deductions.

In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount that, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Three thousand dollars for single individuals and $6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return), provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of $930 for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of $800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional $1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. A deduction in the amount of $12,000 for individuals born on or before January 1, 1939.

b. A deduction in the amount of $12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by $1 for every $1 that the taxpayer's adjusted

federal adjusted gross income exceeds $50,000 for single taxpayers or $75,000 for married taxpayers. For married taxpayers filing separately, the deduction shall be reduced by $1 for every $1 that the total combined adjusted federal adjusted gross income of both spouses exceeds $75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to $4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds $4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any taxable year exceed $4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid

tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed $4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.

8. The total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided that the individual has not claimed a deduction for such amount on his federal income tax return.

9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. The amount an individual pays annually in premiums for long-term health care insurance, provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed $500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. The lesser of $5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided that the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or older with earned income of at least $20,000 for the year and federal adjusted gross income not in excess

of $30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

§ 58.1-322.04. Virginia taxable income; additional modifications.

In calculating Virginia taxable income pursuant to § 58.1-322, the following adjustments shall be made:

1. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

2. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

3. To the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation) and (ii) added back to federal adjusted gross income, such that federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

To the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income, by a shareholder of an electing small business corporation (S corporation) that is

subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

4. Notwithstanding any other provision of law, the income from any disposition of real property that is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-324. Husband and wife.

A. If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined.

B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

1. Their tax shall be determined on their joint Virginia taxable income; or

2. Separate taxes may be determined on their separate Virginia taxable incomes if they so elect.

C. Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes shall be allocated and adjusted as follows:

1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

2. Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable.

3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not described in subdivision 2 ~~of this subsection~~.

4. Where the standard deduction or low income allowance is properly taken pursuant to subdivision ~~D~~ 1 a of § ~~58.1-322~~ 58.1-322.03, such deduction or allowance shall be allocable between husband and wife as they may mutually agree.

5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to whom they relate.

D. Where allocations are permitted to be made under subsection C pursuant to agreement between husband and wife, and husband and wife have failed to agree as to those allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department ~~of Taxation~~.

§ 58.1-339.8. Income tax credit for low-income taxpayers.

A. As used in this section, unless the context requires otherwise:

"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to $300 each for the individual, the individual's spouse, and any person claimed as a dependent on the individual's or married persons' income tax return for the taxable year. For any taxable year in which a husband and wife file separate Virginia income tax returns, the credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married persons.

2. For taxable years beginning on and after January 1, 2006, any individual or married persons, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year.

For purpose of this subdivision, "household" means an individual and in the case of married persons, the individual and his spouse regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.

C. The amount of the credit provided pursuant to subsection B for any taxable year shall not exceed the individual's or married persons' Virginia income tax liability.

D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married persons' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

1. The subtraction under subdivision ~~C 11~~ 8 of § ~~58.1-322~~ 58.1-322.02;

2. The subtraction under subdivision ~~C 23~~ 15 of § ~~58.1-322~~ 58.1-322.02;

3. The subtraction under subdivision ~~C 24~~ 16 of § ~~58.1-322~~ 58.1-322.02;

4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision ~~D~~ 2 b of § ~~58.1-322~~ 58.1-322.03; or

5. The deduction under subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03.

§ 58.1-362. Virginia taxable income of a nonresident estate or trust.

The Virginia taxable income of a nonresident estate or trust shall be its share of income, gain, loss and deduction attributable to Virginia sources as determined under § 58.1-363 increased or reduced, as the case may be, by:

1. The amount derived from or connected with Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the computation of distributable net income of the estate or trust; and

2. The net amount of any modifications as provided for in ~~§ 58.1-322 (not including subsection D thereof)~~ §§ 58.1-322.01, 58.1-322.02, and 58.1-322.04 with respect to the income or gain referred to in subdivision 1 of this section.

§ 58.1-363. Share of a nonresident estate, trust, or beneficiary in income from Virginia sources.

A. The share of a nonresident estate or trust under § 58.1-362 and the share of a nonresident beneficiary of any estate or trust under provisions otherwise applicable to nonresident individuals in estate or trust income or loss attributable to Virginia sources shall be determined as follows:

1. There shall be determined the items of income, gain, loss and deduction derived from Virginia sources, which enter into the computation of distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary).

2. There shall be added or subtracted (as the case may be) the modifications described in ~~§ 58.1-322~~ §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04 to the extent relating to items of income, gain, loss and deduction derived from Virginia sources which enter into the computation of distributable net income (including all such items from another estate or trust of which the first estate or trust is a

beneficiary). No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the computation of distributable net income.

3. The amounts determined under subdivisions 1 and 2 shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of distributable net income. The amounts so allocated shall have the same character under this article as under the laws of the United States relating to federal income taxes. Where an item entering into the computation of such amounts is not characterized by such laws, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

B. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of such allocation, resident beneficiaries) in the net amount determined under subdivisions A 1 and 2 ~~of subsection A~~ shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity.

A. In determining Virginia taxable income of an owner, any modification described in ~~§ 58.1-322~~ §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04 that relates to an item of pass-through entity income, gain, loss or deduction shall be made in accordance with the owner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where an owner's distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the owner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of pass-through entity taxable income or loss.

B. Each item of pass-through entity income, gain, loss or deduction shall have the same character for an owner under this chapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for an owner as if realized directly from

the source from which realized by the pass-through entity or incurred in the same manner by the pass-through entity.

C. Where an owner's distributive shares of an item of pass-through entity income, gain, loss or deduction is determined for federal income tax purposes by special provision in the pass-through entity agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the owner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the pass-through entity agreement made no special provision with respect to such item.

§ 58.1-490. Declarations of estimated tax.

A. Every resident and nonresident individual shall make a declaration of his estimated tax for every taxable year, if his Virginia tax liability can reasonably be expected to exceed an amount, to be determined under regulations promulgated by the Tax Commissioner, which takes into account the additions, subtractions, and deductions set forth in ~~§ 58.1-322~~ §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04, the credits set forth in Articles 3 (§ 58.1-332 et seq.) and 13.2 (§ 58.1-439.18 et seq.), and the filing exclusions set forth in § 58.1-321. Every estate with respect to any taxable year ending two or more years after the date of death of the decedent and every trust shall make a declaration of its estimated tax for every taxable year, if its Virginia taxable income can reasonably be expected to exceed the amount specified by regulation for individuals as set forth above.

B. For purposes of this article, "estimated tax" means the amount which an individual estimates to be his income tax under this chapter for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

C. For purposes of this section, the declaration shall be the first voucher.

D. In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident of the Commonwealth unless both are required by this chapter to file a return, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint

return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

E. A declaration of estimated tax of an individual other than a farmer, fisherman, or merchant seaman shall be filed on or before May 1 of the taxable year, except that if the requirements of subsection A are first met:

1. The declaration shall be filed on or before June 15~~,~~;; or

2. After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15~~,~~;; or

3. After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year.

F. A declaration of estimated tax of an individual having an estimated gross income from (i) farming (including oyster farming); (ii) fishing; or (iii) working as a merchant seaman for the taxable year, which is at least two-thirds of his total estimated gross income for the taxable year, may be filed at any time on or before January 15 of the succeeding year, in lieu of the time otherwise prescribed.

G. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of $40 or less may be filed at any time on or before January 15 of the succeeding year under regulations of the Tax Commissioner.

H. An individual may amend a declaration under regulations of the Tax Commissioner.

I. If on or before March 1 of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

1. Such return shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15.

2. Such return shall be considered as the amendment permitted by subsection H to be filed on or before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

J. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

K. An individual having a taxable year of less than 12 months shall make a declaration in accordance with regulations of the Tax Commissioner.

L. The declaration of estimated tax for an individual who is unable to make a declaration by reason of any disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

M. The declaration of estimated tax for a trust or estate shall be made by the fiduciary. For purposes of the estimated tax imposed in this article, any reference to an "individual" shall be deemed to include the fiduciary required to file a declaration for a trust or estate. Any overpayment of estimated tax with respect to any trust or estate shall be refunded to the fiduciary. A beneficiary of a trust or estate shall not be entitled to a credit against the beneficiary's individual income tax for any overpayment of estimated tax by a trust or estate.

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under ~~subsection C~~ subdivision 14 of § ~~58.1-322~~ 58.1-322.02 shall be allowed for three years following the year in which the credit is taken. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or

partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

C. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations, excluding federal governmental entities, that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations, excluding federal governmental entities, during the immediately preceding three-year period.

D. To the extent included in and not otherwise subtracted from federal adjusted gross income pursuant to § ~~58.1-322~~ 58.1-322.02 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any amount of gain or income recognized by a taxpayer on the application of a tax credit under this article against a Virginia income tax liability.

E. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee of such credit.

F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S corporation, may appoint a tax matters representative, who shall be a general partner, member/manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated or transferred by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

§ 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment.

~~A.~~ Any person filing a tax return or paying an assessment required for any tax administered by the Department ~~of Taxation~~ may file an amended return with the Department within the later of~~:~~ (i) three years from the last day prescribed by law for the timely filing of the return; (ii) one year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; (iii) two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return; (iv) two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or (v) one year from the final determination of any change or

correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

~~B. Notwithstanding the statute of limitations established in this section, any retired employee of a political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of Assembly, may file an amended individual income tax return until May 1, 1990, for taxable years beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income exempt pursuant to § 58.1-322.~~

~~C. Notwithstanding the statute of limitations contained in subsection A, any individual who claimed an age subtraction on his 1990 individual income tax return may file an amended individual income tax return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending before January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the income subtraction originally claimed.~~

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Title 55.1 Proposed Subtitles

Subtitle I Real Estate Conveyances
1. Creation and Limitation of Estates; Their Qualities, §§ 55-1 through 55-25.1.
3. Property Rights of Married Women, §§ 55-35 through 55-47.1.
4. Form and Effect of Deeds and Covenants; Liens, §§ 55-48 through 55-79.06.
5. Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writings Necessary to Be Recorded, §§ 55-80 through 55-105.
8. Clouds on Title, §§ 55-153 through 55-155.
15. Apportionment of Moneys; Management of Institutional Funds, §§ 55-253 through 55-277.
20. Virginia Solar Easements Act, §§ 55-352 through 55-359.

Subtitle II Real Estate Settlements and Recordation
6. Recordation of Documents, §§ 55-106 through 55-142.15.
27. Virginia Residential Property Disclosure Act, §§ 55-517 through 55-525.
27.1. Exchange Facilitators Act, §§ 55-525.1 through 55-525.7.
27.2. Real Estate Settlements, §§ 55-525.8 through 55-525.15.
27.3. Real Estate Settlement Agents, §§ 55-525.16 through 55-525.32.
28. Commercial Real Estate Broker's Lien Act, §§ 55-526, 55-527

Subtitle III Rental Conveyances
13. Landlord and Tenant, §§ 55-217 through 55-248.
13.2. Virginia Residential Landlord and Tenant Act, §§ 55-248.2 through 55-248.40.
13.3. Manufactured Home Lot Rental Act, §§ 55-248.41 through 55-248.52.
14. Emblements, §§ 55-249 through 55-252.
25. Transfer of Deposits, § 55-507

Title 55.1 Proposed Subtitles

Subtitle IV Common Interest Communities
4.1. Horizontal Property, §§ 55-79.1 through 55-79.38.
4.2. Condominium Act, §§ 55-79.39 through 55-79.103.
19. Subdivided Land Sales Act, §§ 55-336 through 55-351.
21. The Virginia Real Estate Time-Share Act, §§ 55-360 through 55-400.
24. Virginia Real Estate Cooperative Act, §§ 55-424 through 55-506.
26. Property Owners' Association Act, §§ 55-508 through 55-516.2

Subtitle V Miscellaneous
9. Assignments for Benefit of Creditors, §§ 55-156 through 55-167.
10. Escheats Generally, §§ 55-168 through 55-201.1.
11. Estrays and Drift Property, §§ 55-202 through 55-210.
11.1. Disposition of Unclaimed Property, §§ 55-210.1 through 55-210.30.
18. Trespasses; Fences, §§ 55-298 through 55-335.
23. Virginia Self-Service Storage Act, §§ 55-416 through 55-423.

Subtitle III. Rental Conveyances

Part A. Residential Tenancies

Chapter XX (1) General Provisions

Chapter XX (2) Virginia Residential Landlord Tenant Act

Chapter XX (3) Other Residential Tenancies

Part B. Commercial and Other Tenancies

Chapter XX (4) Manufactured Home Lot Rental Act

Chapter XX (5) Residential Ground Rent Act

Chapter XX (6) Commercial Tenancies

Chapter XX (7) Deeds of Lease

Chapter XX (8) Emblements

SUBTITLE III.

RENTAL CONVEYANCES.

Drafting note: Proposed Subtitle III is created to logically reorganize all provisions relating to rental conveyances in two parts: proposed Part A, Residential Tenancies, and proposed Part B, Other Tenancies.

PART A.

RESIDENTIAL TENANCIES.

Drafting note: Proposed Part A is created to logically reorganize all provisions relating to residential tenancies in three chapters: parts of existing Chapters 13 and 13.2 are logically reorganized as proposed Chapter XX [1], General Provisions; parts of existing Chapter 13.2 are retained as proposed Chapter XX [2], the Virginia Residential Landlord and Tenant Act; and parts of existing Chapter 13 are retained as proposed Chapter XX [3], Other Residential Tenancies.

CHAPTER XX. **[1]**

GENERAL PROVISIONS.

Drafting note: Parts of existing Chapters 13 and 13.2 are logically reorganized as proposed Chapter XX [1] of Part A, which consolidates general provisions that apply to all residential tenancies and is divided into the following proposed articles: Article 1, In General; Article 2, Assignments; Article 3, Landlord Obligations; Article 4, Tenant Obligations; Article 5, Tenant Remedies; and Article 6, Landlord Remedies.

Article 1.

In General.

Drafting note: Proposed Article 1 consolidates existing definitions and sections from existing Chapters 13 and 13.2 that are generally applicable to all residential tenancies.

§ ~~55-248.4~~ 55.1-xxx. Definitions.

~~When~~ As used in this ~~chapter~~ part, unless ~~expressly stated otherwise~~ the context requires a different meaning:

"Action" means any recoupment, counterclaim, ~~set off~~ setoff, or other civil suit and any other proceeding in which rights are determined, including ~~without limitation~~ actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, ~~which~~ that is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee~~, which~~ that is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. ~~An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.~~

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for habitation~~,~~ or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that part of a structure that is used as a home, residence, or

sleeping place, by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date ~~upon~~ on which the tenant is entitled to occupy the dwelling unit as a tenant.

"Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of tenants, corporate members who are not tenants, and any other category of persons specified in the bylaws of the organization and that:

1. Is not sponsored by a for-profit organization;

2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and

4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-income and moderate-income families in perpetuity.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including~~, but not limited to,~~ a manufactured home, as defined in § 55.1-xxx [§ 55-248.41].

"Effective date of rental agreement" means the date ~~upon~~ on which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Essential service" includes heat, running water, hot water, electricity, and gas.

"Facility" means something that is built, constructed, installed, or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or ~~person authorized by the landlord to occupy the premises~~ an authorized occupant, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling~~,~~ that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. "Landlord ~~shall~~" does not~~, however,~~ include a community land trust ~~as defined in § 55-221.1~~.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the ~~United States~~ U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the American Conference of Governmental Industrial Hygienists (the Bioaerosols ~~Manual:~~ Assessment and Control)~~,~~; Standard and Reference Guides of the Institute of Inspection, Cleaning, and Restoration Certification (IICRC) for Professional Water Damage Restoration and Professional Mold Remediation~~,~~; or any protocol for mold remediation prepared by an industrial hygienist consistent with ~~said~~ such guidance documents.

"Natural person," wherever the ~~chapter~~ part refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships,

limited liability partnerships, registered limited liability partnerships or limited liability companies, or any other lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice~~, which may be either a United States postal certificate of mailing or~~ in the form of a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person, whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association~~,~~; two or more persons having a joint or common interest~~, or~~; any combination thereof~~,~~; and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession, in whom is vested:

1. All or part of the legal title to the property~~,~~; or

2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises~~, and the term includes a mortgagee in possession~~.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association, or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part ~~and~~, facilities and appurtenances contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment

of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § ~~55-248.17~~ 55.1-xxx embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. ~~A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.~~

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. "Major facility" in the case of a

bathroom means a toilet~~,~~ and either a bath or shower~~,~~ and in the case of a kitchen means a refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. "Security deposit ~~shall~~" does not include a damage insurance policy or renter's insurance policy, as those terms are defined in § ~~55-248.7:2~~ 55.1-xxx, purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and ~~shares neither~~ does not share heating facilities, hot water equipment, ~~nor~~ or any other essential facility or essential service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and ~~shall include~~ includes a roomer. "Tenant ~~shall~~" does not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records, about a tenant or prospective tenant, whether such information is in written or electronic form or any other medium. ~~A tenant may request copies of his tenant records pursuant to § 55-248.9:1.~~

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the

rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2~~,~~ or a ratio utility billing system as defined in §~~ 55-226.2~~ 55.1-xxx.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with §~~ 55-248.6~~ 55.1-xxx, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by~~ Chapter 42.1~~ the Uniform Electronic Transactions Act (§ 59.1-479 et seq.)~~ of Title 59.1~~ is affixed.~~ The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.~~

Drafting note: Definitions from existing § 55-248.4 are relocated from the Virginia Residential Landlord and Tenant Act (VRLTA) (§ 55-248.2 et seq.) to this proposed chapter because they apply to all residential tenancies. In the definitions of "action," "without limitation" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language in the definition of "application fee" pertaining to the amount of such fee is stricken and relocated to proposed § 55.1-xxx [§ 55-248.6:1] because it is applicable only to application fees for tenancies governed by the VRLTA. The definition for "community land trust" is relocated from existing § 55-221.1. In the definition of "dwelling unit," "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means, includes, but not limited to." The definition of "essential service" is added on the basis of the list of essential services in existing § 55-248.23. In the definition of "guest or invitee," the phrase "person authorized

by the landlord to occupy the premises" is replaced with the defined term "authorized occupant." In the definition of "Mold remediation in accordance with professional standards," the references to guide documents were updated to reflect the current titles. In the definition of "notice," reference to a U.S. postal certificate of mailing is– stricken because that type of certificate is no longer in use. Language in the definition of "rental application" pertaining to application fees and identification is– stricken and relocated to proposed § 55.1-xxx [§ 55-248.6:1] because it is applicable only to rental agreements for tenancies governed by the VRLTA. The last sentence in the definition of "tenant records" is stricken because its provisions are contained in current law in subsection D of proposed § 55.1-xxx [§ 55-248.9:1] and it is applicable only to tenancies governed by the VRLTA. The last sentence in the definition of "written notice" is relocated to proposed § 55.1-xxx [§ 55-248.6], which contains all provisions related to service of notice for tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-221.1. Community land trusts not considered landlords.~~

~~For the purposes of this chapter, the term "landlord" shall not include a community land trust. "Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of lessees, corporate members who are not lessees, and any other category of persons specified in the bylaws of the organization and that:~~

~~1. Is not sponsored by a for-profit organization;~~

~~2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;~~

~~3. Transfers ownership of any structural improvements located on such leased parcels to the lessee; and~~

~~4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity.~~

Drafting note: Existing § 55-221.1 is logically relocated to two proposed sections: The definition of "community land trust" is relocated to proposed § 55.1-xxx[previous section] (Definitions), and the first sentence of existing § 55-221.1 is restated as proposed subdivision A 7 of § 55.1-xxx[next section] (Applicability), excluding occupancy in a community land trust from residential rental tenancies.

§ ~~55-248.5~~ 55.1-xxx. ~~Exemptions; exception to exemption; application of chapter to certain occupants~~ Applicability.

A. ~~Except as specifically made applicable by § 55-248.21:1, the following conditions are not governed by this~~ This chapter applies to all residential tenancies. The following occupancies are not residential rental tenancies for purposes of this part:

1. Residence at a public or private institution~~,~~ if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. ~~Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;~~

~~3.~~ Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

~~4. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;~~

~~5. Occupancy by 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 sixty days;~~

~~6.~~ 3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

~~7.~~ 4. Occupancy under a rental agreement ~~covering premises used by the occupant primarily in connection with business,~~ for a commercial ~~or agricultural purposes~~ tenancy;

~~8.~~ 5. Occupancy in a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development where such regulation is inconsistent with this ~~chapter~~ part;

~~9. Occupancy by a tenant who pays no rent;~~

~~10. Occupancy in single-family residences located in Virginia where the owners are natural persons or their estates who own in their own name no more than two single-family residences subject to a rental agreement; and~~

~~11.~~ 6. Occupancy in a campground as defined in § 35.1-1; and

7. Occupancy in a community land trust.

B. 1. A guest who is an occupant ~~in~~ of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this ~~chapter~~ part, and the innkeeper or property owner, or his agent ~~thereof~~, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant ~~thereto~~ to such action, which would otherwise be required under this ~~chapter~~ part. For purposes of this ~~chapter~~ part, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this ~~chapter~~ part if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

~~C.~~ 2. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging as his primary residence for

fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this ~~chapter~~ part. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

~~D.~~ 3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging as ~~their~~ his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this ~~chapter~~ part.

~~E. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the applicability of the provisions of this chapter in the rental agreement.~~

Drafting note: This section incorporates provisions of existing § 55-248.5 and existing subsections B, C, and D of § 55-225.8 (which duplicate existing subsections B, C, and D of § 55-248.5 in the Virginia Residential Landlord and Tenant Act (VRLTA)) that apply to all residential tenancies. Existing subdivisions A 2, 5, and 9 of § 55-248.5 are stricken and relocated to proposed § 55-xxx [§ 55-248.3:1] because those exemption are only applicable to the VRLTA. Existing subdivision A 4 of § 55-248.5 is stricken as redundant to proposed subsection B of this section. Existing subdivision A 10 is stricken because it describes the applicability of the provisions of proposed Chapter XX [3]. The statement in existing § 55-221.1 that states that community land trusts are not landlords is moved to this section as proposed subdivision A 7 for a more logical placement as an exclusion from applicability. In proposed subsection B 1, the word "transient" is added before "lodging" for consistency with subdivisions B 2 and B 3, and cross-references are added to the Virginia Real Estate Time-Share Act throughout subdivision B. Existing subsection E is stricken and its provisions relocated to Chapter XX [3]. Technical changes are made.

§ ~~55-218.1~~ 55.1-xxx. Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth.

Any nonresident person as the term "person" is defined in § ~~55-248.4 of this title~~ 55.1-xxx of the Commonwealth who owns and leases residential ~~or commercial~~ real property consisting of four or more units within ~~a county or city in~~ the Commonwealth shall have and continuously maintain an agent who is a resident and maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order, or demand required or permitted by law to be served upon such property owner.

Whenever any nonresident property owner fails to appoint or maintain an agent, as required ~~herein~~ in this section, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth shall be an agent of the nonresident property owner upon whom may be served any process, notice, order, or demand. Service may be made on the Secretary or any of his staff at his office, who shall forthwith cause it to be sent by registered or certified mail addressed to the property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The name and office address of the agent appointed as provided ~~herein~~ in this section shall be filed in the office of the clerk of the court in which deeds are recorded in the county or city ~~wherein~~ in which the property lies. Recordation shall be in the same book as certificates of fictitious names are recorded as provided by § 59.1-74 for which the clerk shall be entitled to a fee of $10.

No nonresident property owner shall maintain an action in the courts of the Commonwealth concerning property for which a designation is required ~~hereunder~~ by this section until such designation has been filed.

Drafting note: Existing § 55-218.1 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this chapter of general provisions for residential tenancies because it

applies to all residential tenancies. The reference to commercial tenancies is stricken in this section. Language is updated for modern usage, and technical changes are made.

§ ~~55-219~~ 55.1-xxx. Apportionment on purchase of part of land by holder of rent~~, etc~~.

When the holder of a rent ~~shall purchase~~ purchases part of the land out of which the ~~same~~ rent issues, ~~the~~ such rent shall be apportioned in like manner as if the land had come to him by descent~~;~~, and when the holder of land, being part of land out of which a rent shall be issuing, ~~shall purchase~~ purchases such rent or part ~~thereof~~ of it, the rent so purchased shall be apportioned as ~~aforesaid~~ in like manner as if the land had come to him by descent.

Drafting note: Existing § 55-219 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this chapter of general provisions for residential tenancies because it applies to all residential tenancies. Technical changes are made.

§ ~~55-220.1~~ 55.1-xxx. Perfection of lien or interest in leases, rents, and profits.

The recordation pursuant to § ~~55-106~~ 55.1-xxx, in the county or city in which the real property is located, of any deed, deed of trust, or other instrument granting, transferring, or assigning the interest of the grantor, transferor, assignor, pledgor, or ~~lessor~~ landlord in leases, rents, or profits arising from the real property described in such deed, deed of trust, or other instrument~~,~~ shall fully perfect the interest of the grantee, transferee, assignee, or pledgee ~~or assignee~~ as to the assignor and all third parties without the necessity of (i) furnishing notice to the assignor or ~~lessee~~ tenant, (ii) obtaining possession of the real property, (iii) impounding the rents, (iv) securing the appointment of a receiver, or (v) taking any other affirmative action. The ~~lessee~~ tenant is authorized to pay the assignor until the ~~lessee~~ tenant receives written notification that rents due or to become due have been assigned and that payment is to be made to the assignee. ~~This section shall apply to all instruments of record before, on, or after July 1, 1992.~~

Drafting note: Existing § 55-220.1 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this chapter of general provisions for residential tenancies because it applies to all residential tenancies. References to "lessor" are changed to "landlord" and references to "lessee" are changed to "tenant" to reflect modern usage of these terms in

the residential tenancies context. The last sentence is stricken as obsolete. Technical changes are made.

§ ~~55-226.2~~ 55.1-xxx. Energy submetering, energy allocation equipment, sewer and water submetering equipment, and ratio utility ~~billings~~ billing systems; local government fees.

A. As used in this section:

"Building" means all of the individual dwelling units served through the same utility-owned meter within a residential building that is defined in subsection A of § 56-245.2 as an apartment building or house or all of the individual dwelling units served through the same utility-owned meter within a manufactured home park as defined in § 55.1-xxx [55-248.41].

"Campground" means the same as that term is defined in § 35.1-1.

"Campsite" means the same as that term is defined in § 35.1-1.

"Energy allocation equipment" means the same as that term is defined in subsection A of § 56-245.2.

"Energy submetering equipment" means the same as the term "submetering equipment" as it is defined in subsection A of § 56-245.2.

"Local government fees" means any local government charges or fees assessed against a residential building or campground, including charges or fees for stormwater, recycling, trash collection, elevator testing, fire or life safety testing, or residential rental inspection programs.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants of a building, manufactured home park, or campground, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building, manufactured home park, or campground owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based on square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease.

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any dwelling unit, as defined in subsection A of § 56-245.2, or

campsite, when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the building in which the dwelling unit is located or campground where the campsite is located.

B. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a ~~commercial or residential~~ building, manufactured home park, or campground if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

~~B.~~ C. If energy submetering equipment, energy allocation equipment, or water and sewer submetering equipment~~, or energy allocation equipment~~ is used in any building, manufactured home park, or campground, the owner, manager, or operator of the building, manufactured home park, or campground shall bill the tenant for electricity, natural gas, or water and sewer for the same billing period as the utility serving the building, manufactured home park, or campground, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building, manufactured home park, or campground may charge and collect from the tenant additional service charges, including~~, but not limited to,~~ monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building, manufactured home park, or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease. The building, manufactured home park, or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

~~C.~~ D. If a ratio utility billing system is used in any building, manufactured home park, or campground, in lieu of increasing the rent, the owner, manager, or operator of the building,

manufactured home park, or campground may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a building, manufactured home park, or campground, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building, manufactured home park, or campground owner from a third-party provider of the utility service. The owner, manager, or operator of the building, manufactured home park, or campground may charge and collect from the tenant additional service charges, including ~~but not limited to~~ monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the building, manufactured home park, or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease. The building, manufactured home park, or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent (i) as defined in § ~~55-248.4~~ 55.1-xxx if a ratio utility billing system is used in a residential multifamily dwelling unit subject to the Virginia Residential Landlord and Tenant Act (§ ~~55-248.2~~ 55.1-xxx et seq.) or (ii) as defined in § ~~55-248.41~~ 55.1-xxx if a ratio utility billing system is used in a manufactured home park subject to the Manufactured Home Lot Rental Act (§ ~~55-248.41~~ 55.1-xxx et seq.).

~~D.~~ E. Energy allocation equipment shall be tested periodically by the owner, operator, or manager of the building, manufactured home park, or campground. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

~~E.~~ F. The owner of any building, manufactured home park, or campground shall maintain adequate records regarding energy submetering equipment, energy allocation equipment, water and sewer submetering equipment~~, energy allocation equipment~~, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within the building, manufactured home park, or campground. The owner of the building, manufactured home park, or campground may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

~~F.~~ G. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under Chapter ~~13~~ XX [2] (§ ~~55-217~~ 55.1-xxx et seq.) or Chapter ~~13.2~~ XX [3] (§ ~~55-248.2~~ 55.1-xxx et seq.) ~~of this title~~, if applicable. The use of energy submetering equipment, energy allocation equipment, water and sewer submetering equipment~~, energy allocation equipment~~, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

~~G.~~ H. In lieu of increasing the rent, the owner, manager, or operator of a ~~commercial or residential~~ building, manufactured home park, or campground may employ a program that utilizes a mathematical formula for allocating the actual or anticipated local government fees billed to the building, manufactured home park, or campground owner among the tenants in such building, manufactured home park, or campground if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building, manufactured home park, or campground owner and the tenant in the rental agreement or lease. Such owner, manager, or operator of a ~~commercial or~~

~~residential~~ building, manufactured home park, or campground may also charge and collect from each tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for administration of such a program. If the building is residential and is subject to (i) the Virginia Residential Landlord and Tenant Act (§ ~~55-248.2~~ 55.1-xxx et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § ~~55-248.4~~ 55.1-xxx or (ii) the Manufactured Home Lot Rental Act (§ ~~55-248.41~~ 55.1-xxx et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § ~~55-248.41~~ 55.1-xxx.

~~H.~~ I. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a ~~commercial or residential~~ building, manufactured home park, or campground from including water, sewer, electrical, natural gas, or other utilities in the amount of rent as specified in the rental agreement or lease.

~~I. As used in this section:~~

~~"Building" means all of the individual units served through the same utility-owned meter within a commercial or residential building that is defined in subsection A of § 56-245.2 as an apartment building or house, office building or shopping center, or all of the individual dwelling units served through the same utility-owned meter within a manufactured home park as defined in § 55-248.41.~~

~~"Campground" means the same as that term is defined in § 35.1-1.~~

~~"Campsite" means the same as that term is defined in § 35.1-1.~~

~~"Energy allocation equipment" has the same meaning ascribed to such term in subsection A of § 56-245.2.~~

~~"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in subsection A of § 56-245.2.~~

~~"Local government fees" means any local government charges or fees assessed against a commercial or residential building or campground, including stormwater, recycling, trash collection, elevator testing, fire or life safety testing, or residential rental inspection programs.~~

~~"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a building or campground, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building or campground owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building or campground owner and the tenant in the rental agreement or lease.~~

~~"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any dwelling unit or nonresidential rental unit, as defined in subsection A of § 56-245.2 or campsite, when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the building in which the dwelling unit or nonresidential rental unit is located or campground where the campsite is located.~~

Drafting note: Existing § 55-226.2 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this chapter of general provisions for residential tenancies because it applies to all residential tenancies. The definitions are moved from existing subsection I to the beginning of the section. References to commercial buildings are stricken. The term "manufactured home park" is added throughout the section for consistency with subsection B. In proposed subsections C and D, "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means, includes, but not limited to." Technical changes are made.

~~CHAPTER 25.~~

~~TRANSFER OF DEPOSITS.~~

Drafting note: Existing Chapter 25 is recommended for repeal. It contains only one section, which has been relocated to proposed Chapter XX [1], Chapter XX, Chapter XX [4] and Chapter XX [6] because it applies to residential tenancies, the rental of manufactured homes, and commercial tenancies.

§ ~~55-507~~ 55.1-xxx. Transfer of deposits upon purchase.

The owner of rental property shall transfer any security deposits and any accrued interest on the deposits in his possession to the new owner at the time of the transfer of the rental property.

Drafting note: Existing § 55-507 is logically relocated from existing Chapter 25 (§ 55-507) to this chapter of general provisions for residential tenancies because it applies to all residential tenancies, and identical language is added to Chapter XX [4] and Chapter XX [6] as it also applies to manufactured home rentals and commercial tenancies.

Article 2.

Assignments.

Drafting note: Proposed Article 2 of Chapter XX [1] consolidates all sections from existing Chapter 13 (§ 55-217 et seq.) relating to assignments of leases that are applicable to residential tenancies.

§ ~~55-217~~ 55.1-xxx. Grantees and assignees ~~to~~ have same rights against ~~lessees~~ tenants as ~~lessors, etc~~ landlords.

A grantee or assignee of any land ~~let to lease~~ rented, or of the reversion thereof, and his heirs, personal representative, or assigns shall enjoy against the ~~lessee,~~ tenant or his personal representative or assigns~~,~~ the like advantage, by action or entry for any forfeiture or by action upon any covenant or promise in the lease, ~~which~~ that the grantor, assignor, or ~~lessor~~ landlord, or his heirs, might have enjoyed.

Drafting note: Existing § 55-217 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this article on assignments because it applies to assignments of leases for all residential tenancies. References to "lessor" are changed to "landlord" and references to "lessee" are changed to "tenant" to reflect modern usage of these terms in the residential tenancies context. Technical changes are made.

§ ~~55-218~~ 55.1-xxx. ~~Lessees, etc., to~~ Tenants have same rights against grantees~~, etc.,~~ as against ~~lessors~~ landlords.

A ~~lessee,~~ tenant or his personal representative or assigns may have against a grantee or alienee of the reversion, or of any part ~~thereof~~ of such reversion, or his heirs or assigns~~,~~ the like benefit of any condition, covenant, or promise in the lease as he could have had against the ~~lessors themselves~~ landlord and ~~their~~ his heirs and assigns, except the benefit of any warranty, in deed or law.

Drafting note: Existing § 55-218 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this article on assignments because it applies to assignments of leases for all residential tenancies. References to "lessor" are changed to "landlord" and references to "lessee" are changed to "tenant" to reflect modern usage of these terms in the residential tenancies context. Technical changes are made.

§ ~~55-220~~ 55.1-xxx. What powers to pass to grantee or devisee; when attornment unnecessary.

In conveyances or devises of rents in fee, with powers of distress and reentry, or either of them, such powers shall pass to the grantee or devisee without express words. A grant or devise of a rent, or of a reversion or remainder, ~~shall be~~ is good and effectual without attornment of the tenant~~;~~, but no tenant who~~,~~ before notice of the grant~~, shall have~~ paid the rent to the grantor shall suffer any damage ~~thereby~~ as a result of such payment.

Drafting note: Existing § 55-220 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this article on assignments because it applies to assignments of leases for all residential tenancies. Technical changes are made.

§ ~~55-221~~ 55.1-xxx. When attornment void.

The attornment of a tenant to any stranger ~~shall be~~ is void, unless it ~~be~~ is with the consent of the landlord of such tenant or pursuant to or in consequence of the judgment, order, or decree of a court.

Drafting note: Existing § 55-221 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this article on assignments because it applies to assignments of leases for all residential tenancies. Technical changes are made.

Article 3.

Landlord Obligations.

Drafting note: Proposed Article 3 consolidates all sections from existing Chapters 13 (§ 55-217 et seq.) and 13.2, the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), that relate to the obligations of landlords in residential tenancy agreements.

§ ~~55-225.15~~ 55.1-xxx. Receipt required for certain rental payments; upon request.

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

Drafting note: Existing § 55-225.15 is logically relocated from existing Chapter 13 (§ 55-217 et seq.) to this article on the obligations of landlords because it applies to such obligations for all residential tenancies. A technical change is made.

§ ~~55-248.12:2~~ 55.1-xxx. Required disclosures for properties with defective drywall; remedy for nondisclosure.

A. If the landlord of a ~~residential~~ dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days ~~of notice~~ of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of

the landlord or tenant arising under this ~~chapter~~ part, other applicable law, or the rental agreement.

Drafting note: Existing § 55-248.12:2 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on the obligations of landlords because it applies to such obligations for all residential tenancies. In subsection A, the word "residential" is deleted before "dwelling unit" as redundant. In subsection B, the words "of notice" are deleted after "60 days" for consistency with the termination provisions for properties found to have been used to manufacture methamphetamine contained in existing subsection B of§ 55-248.12:3. Technical changes are made.

~~§ 55-225.11. Required disclosures for properties with defective drywall; remedy for nondisclosure.~~

~~A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.~~

~~B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.11 in Chapter 13 and § 55-248.12:2 in the VRLTA) and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.12:3~~ 55.1-xxx. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.

A. If the landlord of a ~~residential~~ dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the landlord shall provide to a prospective tenant a written disclosure that ~~so~~ states such information. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this ~~chapter~~ part, other applicable law, or the rental agreement.

Drafting note: Existing § 55-248.12:3 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on the obligations of landlords because it applies

to such obligations for all residential tenancies. In subsection A, the word "residential" is deleted before "dwelling unit" as redundant. A technical change is made.

~~§ 55-225.17. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.~~

~~A. If the landlord of a residential dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the landlord shall provide to a prospective tenant a written disclosure that so states. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.~~

~~B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.17 in Chapter 13 and § 55-248.12:3 in the VRLTA) and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.13~~ 55.1-xxx. Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold~~,~~ and ~~to~~ promptly respond to any notices from a tenant as provided in subdivision ~~A 10~~ xxx of § ~~55-248.16~~ 55.1-xxx. Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall make available to the tenant copies of any available written information related to the remediation of mold;

6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same; and

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning, or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection~~; and~~

~~8. Maintain any carbon monoxide alarm that has been installed by the landlord in a dwelling unit~~.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision ~~1 of subsection~~ A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision ~~1 of subsection~~ A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 ~~of subsection A~~ and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord~~,~~ and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

Drafting note: Existing § 55-248.13 is logically relocated from the existing Virginia Residential Landlord and Tenant Act (VRLTA) (§ 55-248.2 et seq.) to this article on the obligations of landlords because it applies to such obligations for all residential tenancies. Subdivision A 8 is stricken and relocated as proposed § 55.1-xxx in the VRLTA because the requirements related to carbon monoxide detectors are applicable only to residential tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-225.3. Landlord to maintain dwelling unit.~~

~~A. The landlord shall:~~

~~1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;~~

~~2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;~~

~~3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;~~

~~4. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and~~

~~5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold and to promptly respond to any notices as provided in subdivision A 8 of § 55-225.4.~~

~~B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall be liable only for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.~~

~~C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.~~

~~D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 2, 3, and 4 and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.3 in Chapter 13 and § 55-248.13 in the VRLTA) that are substantially similar and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

Article 4.

Tenant Obligations.

Drafting note: Proposed Article 4 consolidates all sections from existing Chapters 13 (§ 55-217 et seq.) and 13.2, the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), that relate to the obligations of tenants in residential tenancy agreements.

§ ~~55-248.16~~ 55.1-xxx. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. ~~Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;~~

~~4.~~ Remove from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner ~~and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises~~;

~~5.~~ 4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

~~6.~~ 5. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances ~~including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement~~;

~~7.~~ 6. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person ~~to do so,~~ whether known by the tenant or not, to do so;

~~8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);~~

~~9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative and shall maintain the carbon monoxide alarm in accordance with the~~

~~uniform set of standards for maintenance of carbon monoxide alarms established in the Uniform Statewide Building Code (§ 36-97 et seq.);~~

~~10.~~ 7. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

~~11.~~ 8. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord, provided that (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces, or making alterations in the dwelling unit;

~~12.~~ 9. Be responsible for his conduct and the conduct of other persons, whether known by the tenant or not, who are on the premises with his consent ~~whether known by the tenant or not~~, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

~~13.~~ 10. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § ~~55-248.17~~ 55.1-xxx.

B. If the duty imposed by subdivision ~~1 of subsection~~ A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

Drafting note: Existing § 55-248.16 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on the obligations of tenants because it applies to such obligations for all residential tenancies. Language in existing subdivisions A 3 and part of A 4, 6, 8, and 9 is stricken and relocated to proposed § 55.1-xxx [§ 55-248.16] in Article 3 of the VRLTA because they are applicable only to residential tenancies that are governed by the VRLTA. Technical changes are made.

~~§ 55-225.4. Tenant to maintain dwelling unit.~~

~~A. In addition to the provisions of the rental agreement, the tenant shall:~~

~~1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;~~

~~2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;~~

~~3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;~~

~~4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;~~

~~5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;~~

~~6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;~~

~~7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative, and shall maintain such smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);~~

~~8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;~~

~~9. Not paint or disturb painted surfaces, or make alterations in the dwelling unit, without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;~~

~~10. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and~~

~~11. Abide by all reasonable rules and regulations imposed by the landlord.~~

~~B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.4 in Chapter 13 and § 55-248.16 in the VRLTA) that are substantially similar and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.18:1~~ 55.1-xxx. Access following entry of certain court orders.

A. A tenant or authorized occupant who has obtained an order from a court ~~of competent jurisdiction~~ pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant or authorized occupant to do so, provided that:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions ~~of how to operate~~ for operating all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A person~~,~~ who is not a tenant or authorized occupant ~~in~~ of the dwelling unit and who has obtained an order from a court ~~of competent jurisdiction~~ pursuant to § 16.1-279.1 or

subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants~~,~~ may provide a copy of such order to the landlord and submit a rental application to become a tenant ~~in~~ of such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant ~~in~~ of such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement~~,~~ and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

D. This section shall not apply when the court order excluding a person was issued ex parte.

Drafting note: Existing § 55-248.18:1 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on the obligations of tenants because it applies to such obligations for all residential tenancies. "Of competent jurisdiction" is deleted after "court" in subsections A and B as unnecessary; the court must have the authority under the sections cross-referenced to make the order. Technical changes are made.

~~§ 55-225.5. Access following entry of certain court orders.~~

~~A. A tenant or authorized occupant who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant or authorized occupant to do so, provided:~~

~~1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and~~

~~2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.~~

~~Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.~~

~~B. A person, who is not a tenant or authorized occupant in the dwelling unit and who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants, may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no~~

~~later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.~~

~~Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement, and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.~~

~~C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.~~

~~D. This section shall not apply when the court order excluding a person was issued ex parte.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.5 in Chapter 13 and § 55-248.18:1 in the VRLTA) that are identical and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

Article 5.

Tenant Remedies.

Drafting note: Proposed Article 5 consolidates all sections from existing Chapters 13 (§ 55-217 et seq.) and 13.2, the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), that relate to remedies available to tenants in residential tenancy agreements.

§ ~~55-248.21~~ 55.1-xxx. Noncompliance by landlord.

Except as provided in this ~~chapter~~ part, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this ~~chapter~~ part, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement

will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach ~~which~~ that is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach~~,~~ and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice ~~which~~ that required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, ~~a member of his family, or other person on the premises with his consent whether known by the tenant or not~~ an authorized occupant, or a guest or invitee of the tenant. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this ~~chapter~~ part. The tenant shall be entitled to recover reasonable ~~attorneys'~~ attorney fees, unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. ~~If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55-248.15:1.~~

Drafting note: Existing § 55-248.21 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. Language in the last paragraph is amended to use the defined terms "authorized occupant" and "guest or invitee." The provision relating to security

deposits is relocated to proposed § 55.1-xxx [§ 55-248.15:1] because it is applicable only to residential tenancies that are governed by the VRLTA. Technical changes are made.

~~§ 55-225.13. Noncompliance by landlord in the rental of a dwelling unit.~~

~~Except as provided in this chapter, for the rental of a dwelling unit, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter affecting dwelling units, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.~~

~~If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.~~

~~If the landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.~~

~~If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorney fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.13 in Chapter 13 and § 55-248.21 in the VRLTA) that are substantially similar and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.21:1~~ 55.1-xxx. Early termination of rental agreement by military personnel.

A. Any member of the ~~armed forces~~ Armed Forces of the United States or a member of the National Guard serving on full-time duty or as a ~~Civil Service~~ civil service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit; (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit; (iii) is discharged or released from active duty with the ~~armed forces~~ Armed Forces of the United States or from his full-time duty or technician status with the National Guard; or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated ~~therein~~ in such written notice, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

C. The landlord may not charge any liquidated damages.

~~C.~~D. Nothing in this section shall affect the tenant's obligations established by § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in Chapter 2].

~~D. The exemption provided in subdivision 10 of subsection A of § 55-248.5 shall not apply to this section.~~

Drafting note: Existing § 55-248.21:1 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. Existing subsection D is stricken because it is no longer applicable due to the relocation of this section. Technical changes are made.

§ ~~55-248.21:2~~ 55.1-xxx. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.

A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or

2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated ~~therein~~ in such written notice, such date to be not less than 30 days

after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.

C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.

D. The landlord may not charge any liquidated damages.

E. The victim's obligations as a tenant under ~~§ 55-248.16~~ § 55.1-xxx shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to ~~§ 55-248.35~~ § 55.1-xxx.

Drafting note: Existing § 55-248.21:2 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. A technical change is made.

~~§ 55-225.16. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.~~

~~A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:~~

~~1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or~~

~~2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.~~

~~B. A tenant who qualifies to terminate obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.~~

~~C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.~~

~~D. The landlord may not charge any liquidated damages.~~

~~E. The victim's obligations as a tenant under § 55-225.4 shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.16 in Chapter 13 and § 55-248.21:2 in the VRLTA) that are identical and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.25:1~~ 55.1-xxx. Rent escrow required for continuance of tenant's case.

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this ~~chapter~~ part, and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance~~,~~ or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. ~~To meet the ends of justice, however, the~~ The court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.

Drafting note: Existing § 55-248.25:1 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. Application for this section is amended so that it applies to all of Part A of this subtitle. Technical changes are made.

~~§ 55-225.14. Rent escrow required for continuance of tenant's case in the rental of a dwelling unit.~~

~~A. Where a landlord has filed an unlawful detainer action seeking possession of the dwelling unit and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed.~~

~~B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the dwelling unit.~~

~~C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the dwelling unit.~~

~~D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.~~

~~E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.14 in Chapter 13 and § 55-248.25:1 in the VRLTA) that are identical and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.26~~ 55.1-xxx. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If ~~the~~ a landlord unlawfully removes or excludes ~~the~~ a tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of ~~gas, water, or other~~ an essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted utility service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and ~~a~~ reasonable attorney ~~fee~~ fees. ~~If the rental agreement is terminated the landlord shall return all of the security deposit in accordance with § 55-248.15:1.~~

Drafting note: Existing § 55-248.26 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. The phrase "gas, water, or other" is stricken in favor of using the defined term "essential service." The provision relating to security deposits is stricken here and relocated to proposed § 55.1-xxx [§ 55-248.15:1] because it applies only to residential tenancies that are governed by the VRLTA. A technical change is made.

~~§ 55-225.2. Remedies for landlord's unlawful ouster, exclusion or diminution of service.~~

~~If a landlord unlawfully removes or excludes a tenant from residential premises or willfully diminishes services to a residential tenant by interrupting or causing the interruption of~~

~~gas, water, or other essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted utility service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and reasonable attorney fees. If the rental agreement is terminated pursuant to this section, the landlord shall return all security given by such tenant.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.2 in Chapter 13 and § 55-248.26 in the VRLTA) that are substantially similar and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.36~~ 55.1-xx. Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit (i) by willful diminution of services to the tenant by interrupting or causing the interruption of ~~electric, gas, water or other~~ an essential service required by the rental agreement or (ii) by refusal to permit the tenant access to the unit unless such refusal is pursuant to a court order for possession. A provision included in a rental agreement authorizing action prohibited by this section is unenforceable.

Drafting note: Existing § 55-248.36 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. The phrase "electric, gas, water or other" is stricken in favor of using the defined term "essential service." The last sentence of this section is based on language in existing § 55-225.1, which is stricken as substantially similar to this section.

~~§ 55-225.1. Recovery of possession limited.~~

~~A landlord may not recover or take possession of a residential dwelling unit by (i) willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service required to be supplied by the landlord under a rental agreement or (ii) refusal to permit the tenant access to such unit unless such refusal is pursuant to an unlawful detainer action from a court of competent jurisdiction and the execution of a writ of~~

~~possession issued pursuant thereto. A provision included in a rental agreement for a dwelling unit authorizing action prohibited by this section is unenforceable.~~

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.1 in Chapter 13 and § 55-248.36 in the VRLTA) that are substantially similar and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

§ ~~55-248.39~~ 55.1-xxx. Retaliatory conduct prohibited.

A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § ~~55-222 or 55-248.37~~ 55.1-xxx after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this ~~chapter~~ part; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing ~~rents~~ rent to that which is charged ~~on~~ for similar market rentals ~~nor~~ or from decreasing services that ~~shall~~ apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this ~~chapter~~ part, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § ~~55-222 or 55-248.37~~ 55.1-xxx and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant ~~or a member of his household or a person on the premises with his consent~~, an authorized occupant, or a guest or invitee of the tenant;

2. The tenant is in default in rent;

3. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit; or

4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. ~~The maintenance of the action provided herein does not release the landlord from liability under § 55-248.15:1.~~

D. The landlord may also terminate the rental agreement pursuant to § ~~55-222 or 55-248.37~~ 55.1-xxx for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation.

Drafting note: Existing § 55-248.39 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on tenant remedies because it applies to such remedies for all residential tenancies. Language in subdivision C 1 is amended to use defined terms "authorized occupant" and "guest or invitee." Language in subdivision C 4 relating to a landlord's obligations with respect to security deposits pursuant to existing § 55-248.15:1 is stricken and relocated to proposed § 55.1-xxx [§ 55-248.15:1] in the VRLTA because it is applicable only to residential tenancies that are governed by the VRLTA. Technical changes are made.

~~§ 55-225.18. Retaliatory conduct prohibited.~~

~~A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55-222 or 55-248.37 after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation~~

~~applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rents to that charged on similar market rentals nor decreasing services that shall apply equally to all tenants.~~

~~B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.~~

~~C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55-222 or 55-248.37 and bring an action for possession if:~~

~~1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;~~

~~2. The tenant is in default in rent;~~

~~3. Compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the tenant of use of the dwelling unit; or~~

~~4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others.~~

~~D. The landlord may also terminate the rental agreement pursuant to § 55-222 or 55-248.37 for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation~~.

Drafting note: Because the text in this section is set out in two sections of the Code (§ 55-225.18 in Chapter 13 and § 55-248.39 in the VRLTA) that are substantially similar

and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this second instance is recommended for repeal.

Article 6.

Landlord Remedies.

Drafting note: Proposed Article 6 contains the section from existing Chapter 13 (§ 55-217 et seq.) that relates to remedies available to landlords in residential tenancy agreements.

§ ~~55-246.1~~ 55.1-xxx. Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § ~~55-248.4~~ 55.1-xxx, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner, or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city ~~wherein~~ in which the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, in any general district court where venue is proper under § 8.01-259, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fieri facias arising out of a ~~landlord-tenant~~ landlord-tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03.

Drafting note: Existing § 55-246.1 is logically relocated from the existing VRLTA (§ 55-248.2 et seq.) to this article on landlord remedies because it applies to such remedies for all residential tenancies. Technical changes are made.

#

~~CHAPTER 13.1~~

~~RENT CONTROL.~~

~~§ 55-248.1. Repealed.~~

Drafting note: Repealed by Acts 2010, c. 92, cl. 1.

CHAPTER ~~13.2~~ XX. **[2]**

THE VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT.

Drafting note: Existing Chapter 13.2, the Virginia Residential Landlord and Tenant Act (VRLTA), is retained as proposed Chapter XX [2]. Numerous provisions of the existing VRLTA that are applicable to all residential tenancies are logically relocated and combined with identical or similar provisions of existing Chapter 13 as proposed Chapter XX [1] (General Provisions) of Part A (Residential Tenancies).

Article 1.

In General ~~Provisions~~.

Drafting note: Existing §§ 55-248.3:1, 55-248.6, 55-248.6:1, 55-248.7, 55-248.7:1, 55-248.7:2, 55-248.8, 55-248.9, 55-248.9:1, and 55-248.10:1 in Article 1 of the VRLTA are retained as proposed Article 1 of the VRLTA in proposed Subtitle III. Existing §§ 55-248.4 and 55-248.5 from Article 1 and § 55-248.40 from Article 6 of the VRLTA are relocated to this article because they apply to all residential tenancies governed by the VRLTA.

~~§ 55-248.2. Short title.~~

~~This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Act."~~

Drafting note: Existing § 55-248.2 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of proposed Chapter XX [2].

§ ~~55-248.3:1~~ 55.1-xxx. Applicability ~~of chapter~~.

A. This chapter shall apply to all rental agreements entered into on or after July 1, 1974, ~~which~~ that are not exempted pursuant to ~~§ 55-248.5~~ subsection B, and all of its provisions

~~thereof~~ shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality~~,~~ or its boards ~~and~~ or commissions or other instrumentalities~~,~~ or by the courts of the Commonwealth.

B. The provisions of this chapter shall not apply to:

1. Occupancy in single-family residences located in Virginia where the owners are natural persons, or their estates, who own in their own name no more than two single-family residences subject to a rental agreement, unless the landlord states in the rental agreement that the landlord-tenant relationship is subject to the provisions of this chapter;

2. Occupancy under a contract of sale of a dwelling unit, or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

3. Occupancy by 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 for less than 60 days; or

4. Occupancy by a tenant who pays no rent pursuant to a rental agreement.

~~§ 55-248.3. Purposes of chapter.~~

~~The purposes of this chapter are to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; to encourage landlords and tenants to maintain and improve the quality of housing; and to establish a single body of law relating to landlord and tenant relations throughout the Commonwealth; provided, however, that nothing~~

C. Nothing in this chapter shall prohibit a ~~county, city or town~~ locality from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts ~~which~~ that may arise out of the application of this chapter, nor shall anything ~~herein~~ in this chapter be deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes. This chapter shall supersede all other local~~, county, or municipal~~ ordinances or regulations concerning landlord and tenant relations and the leasing of residential property.

Drafting note: Existing §§ 55-248.3 and 55-248.3:1 are combined. First, existing subdivisions A 2, 5, 9, and 10 of § 55-248.5 are relocated as proposed subsection B. These exemptions apply only to residential tenancies governed by the VRLTA. Existing subsection E of § 55-248.5, which allows a landlord otherwise exempted from the provisions of the VRLTA because he owns no more than two residential rental properties to opt in to the provisions of this chapter by stating so in the rental agreement, is relocated to the end of proposed subdivision B 1. Second, the initial purpose statement in existing § 55-248.3 is stricken per the Code Commission general policy that purpose statements do not have general and permanent application and thus are not included in the Code. Third, the provision ("provided, however, that nothing in this chapter ...") of existing § 55-248.3 is relocated as proposed subsection C. Technical changes are made.

§ ~~55-248.6~~ 55.1-xxx. Notice.

A. As used in this chapter, "notice" means the same as that term is defined in § 55.1-xxx [§ 55-248.4]~~:~~

~~"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.~~

B. If the rental agreement so provides, the landlord and tenant may send notices in electronic form~~;~~, however, any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the

electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

C. In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made~~,~~ or at any place held out by the landlord as the place for receipt of the communication.

~~C.~~D. In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

~~D.~~E. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

~~E.~~F. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.)~~ of Title 36~~ shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address, and telephone number of the legal services program, if any, serving the jurisdiction~~ wherein~~ in which the premises~~ are~~ is located.

G. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.

Drafting note: Existing subsection A, the definition of "notice," is relocated to proposed § 55.1-xxx [§ 55-248.4], the definitions section for Part A, and a cross-reference is added for ease of use. Proposed subsection G contains a notice provision relocated from the definition of "written notice" in existing § 55-248.4. Technical changes are made.

§ ~~55-248.6:1~~ 55.1-xxx. Application deposit and application fee.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was

made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of ~~said~~ such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

C. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

Drafting note: Proposed subsection B contains rental application provisions relocated from the definition of "rental application" in existing § 55-248.4 because these provisions apply only to tenancies governed by the VRLTA. Proposed subsection C contains rental application provisions relocated from the definition of "application fee" in existing § 55-248.4 because these provisions apply only to tenancies governed by the VRLTA. Technical changes are made.

§ ~~55-248.7~~ 55.1-xxx. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant; ~~accounting of rental payments~~.

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

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for an accounting of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be ~~week to week~~ week-to-week in the case of a ~~roomer~~ tenant who pays weekly rent~~,~~ and month-to-month in all other cases ~~month to month~~. Terminations of tenancies shall be governed by § ~~55-248.37~~ 55.1-xxx, unless the rental agreement provides for a different notice period.

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

F. ~~A~~ The landlord shall provide a copy of any written rental agreement 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. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

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

Drafting note: In subsection D, the term "roomer" is changed to "tenant" to correct a drafting error. Subsection H is stricken because it is identical to existing § 55-225.15, which has been relocated to proposed Chapter XX [1] as applicable to all residential tenancies. Technical changes are made.

§ ~~55-248.7:1~~ 55.1-xxx. Prepaid rent; maintenance of escrow account.

A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. 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. 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.

Drafting note: No change.

§ ~~55-248.7:2~~ 55.1-xxx. Landlord may obtain certain insurance for tenant.

A. ~~Damage Insurance.~~ A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in § ~~55-248.4~~ 55.1-xxx, such payments shall not be deemed a security deposit~~,~~ but shall be rent. However, as provided in § ~~55-248.9~~ 55.1-xxx, the landlord ~~cannot~~ shall not require a tenant to pay both a security ~~deposits~~ deposit and the cost of damage insurance premiums, if the total amount of any security ~~deposits~~ deposit and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. ~~Renter's Insurance.~~ A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in residential dwelling units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, in order to

provide such coverage for the tenant as part of rent or as otherwise provided ~~herein~~ in this section. As provided in § ~~55-248.4~~ 55.1-xxx, such payments shall not be deemed a security deposit~~,~~ but shall be rent. ~~If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage.~~ The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

C. If the landlord requires that premiums for damage insurance or renter's insurance be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for such insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage.

D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with the administration of a renter's insurance program, including a tenant opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

~~D.~~E. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises~~,~~ or the tenant's prorated

share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

Drafting note: Subsection catchlines in subsections A and B are stricken per the general policy of the Code Commission that such internal catchlines are unnecessary. Language in subsection B is relocated to subsection C because it deals with both damage insurance and renter's insurance, which are covered in both subsection A and B. Technical changes are made.

§ ~~55-248.8~~ 55.1-xxx. Effect of unsigned or undelivered rental agreement.

If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement~~,~~ given effect ~~by the operation of~~ pursuant to this section~~,~~ provides for a term longer than one year, it is effective for only one year.

Drafting note: Technical changes.

§ ~~55-248.9~~ 55.1-xxx. Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or ~~forego~~ forgo rights or remedies under this ~~chapter~~ part;

2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ ~~55-79.39~~ 55.1-xxx et seq.), the Virginia Real Estate Cooperative Act (§ ~~55-424~~ 55.1-xxx et seq.), or Chapter ~~13~~ XX (§ ~~55-217~~ 55.1-xxx et seq.), except where the tenant is on a month-to-month lease pursuant to § ~~55-222~~ 55.1-xxx;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's ~~attorney's~~ attorney fees, except as provided in this ~~chapter~~ part;

5. Agrees 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~~ any associated costs ~~connected therewith~~;

6. Agrees 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; or

7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. ~~A~~ Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any ~~of the prohibited provisions~~ such provision, the tenant may recover actual damages sustained by him and reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical changes.

§ ~~55-248.9:1~~ 55.1-xxx. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord or managing agent to a third party unless:

1. The tenant or prospective tenant has given prior written consent;

2. The information is a matter of public record as defined in § 2.2-3701;

3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

4. The information is a copy of a material noncompliance notice that has not been remedied or~~,~~ termination notice given to the tenant under § ~~55-248.31~~ 55.1-xxx, and the tenant did not remain in the premises ~~thereafter~~ after the notice was given;

5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;

6. The information is requested pursuant to a subpoena in a civil case;

7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;

8. The information is requested by a contract purchaser of the landlord's property~~;~~, provided that the contract purchaser agrees in writing to maintain the confidentiality of such information;

9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney or the landlord's collection agency;

12. The information is otherwise provided in the case of an emergency; or

13. The information is requested by the landlord to be provided to the managing agent~~,~~ or a successor to the managing agent.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The

failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing ~~herein~~ in this section shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

Drafting note: Technical changes.

~~§ 55-248.10. Repealed.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

§ ~~55-248.10:1~~ 55.1-xxx. Landlord and tenant remedies for abuse of access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access~~,~~ or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable ~~attorney's~~ attorney fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but ~~which~~ that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct~~,~~ or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical changes.

§ ~~55-248.40~~ 55.1-xxx. Actions to enforce chapter.

In addition to any other remedies in this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), any person adversely affected by an act or omission prohibited under this chapter or Chapter XX [1] may institute an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred. If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice~~,~~ and in its discretion award the plaintiff damages as ~~herein provided~~ provided in this section.

Drafting note: Existing § 55-248.40 is logically relocated from existing Article 6 of the VRLTA to proposed Article 1 of the VRLTA as a general provision for the VRLTA. References to Chapter XX [1] are added to clarify that the remedies provided in this section are available for suits for acts or omissions prohibited under Chapter XX [1], which contains general provisions applicable to all residential tenancies. Technical changes are made.

Article 2.

Landlord Obligations.

Drafting note: Existing §§ 55-248.11:1, 55-248.11:2, 55-248.12, 55-248.12:1, 55-248.13:1, 55-248.13:2, 55-248.13:3, 55-248.14, 55-248.15, and 55-248.15:1 in Article 2 of the VRLTA are retained as proposed Article 2 of the VRLTA. Existing §§ 55-248.12:2, 55-248.12:3, and 55-248.13 are relocated to proposed Article 3 of Chapter XX [1] because they apply to all residential tenancies.

~~§ 55-248.11.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

§ ~~55-248.11:1~~ 55.1-xxx. Inspection of ~~premises~~ dwelling unit; report.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant~~, for his safekeeping,~~ itemizing damages to the dwelling unit existing at the time of occupancy, ~~which record~~ and the report shall be deemed correct unless the tenant objects ~~thereto~~ to it in writing within five days after receipt ~~thereof~~ of the report. The landlord may

adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, ~~which record~~ and the report shall be deemed correct unless the landlord objects ~~thereto~~ to it in writing within five days after receipt ~~thereof~~ of the report. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy ~~thereof~~ of the report, at which time the inspection ~~record~~ report shall be deemed correct. If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § ~~55-248.11:2~~ 55.1-xxx or ~~55-248.13~~ 55.1-xxx.

Drafting note: The word "premises" is changed in the catchline to "dwelling unit" consistent with the language in the section. References to "record" are changed to "report" for consistency. The phrase "for his safekeeping" is stricken as unnecessary. Technical changes are made.

§ ~~55-248.11:2~~ 55.1-xxx. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § ~~55-248.11:1~~ 55.1-xxx, the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects ~~thereto~~ to it in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days ~~thereafter and re-inspect~~ after the tenant's request to take possession or decision to remain in possession, reinspect the dwelling unit to confirm that there is no visible evidence of mold in

the dwelling unit, and ~~reflect on~~ prepare a new report stating that there is no visible evidence of mold in the dwelling unit upon ~~re-inspection~~ reinspection.

Drafting note: Technical changes.

§ ~~55-248.12~~ 55.1-xxx. Disclosure.

A. ~~The~~ For the purpose of service of process and receiving and issuing receipts for notices and demands, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the ~~commencement~~ beginning of the tenancy the name and address of:

1. The person or persons authorized to manage the premises; and

2. An owner of the premises or any other person authorized to act for and on behalf of the owner~~, for the purposes of service of process and receiving and receipting for notices and demands~~.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. If an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel, or motel use or planned unit development, ~~then~~ the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current, and the provisions of this section ~~extends~~ extend to and ~~is~~ are enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and ~~receipting~~ issuing receipts for notices and demands.

Drafting note: Technical changes.

§ ~~55-248.12:1~~ 55.1-xxx. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. Notwithstanding the provisions of ~~subdivision A 10 of~~ § ~~55-248.5~~ 55.1-xxx, the landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided with the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section~~,~~ and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

Drafting note: Technical changes.

§ 55.1-xxx. Landlord to maintain fit premises; additional obligation of the landlord regarding carbon monoxide alarms.

In addition to the landlord's obligations contained in § 55.1-xxx [§ 55-248.13], the landlord shall maintain any carbon monoxide alarm that has been installed by the landlord in a dwelling unit.

Drafting note: Existing subdivision A 8 of § 55-248.13 is relocated as proposed § 55.1-xxx. This provision pertains only to residential tenancies governed by the VRLTA.

§ ~~55-248.13:1~~ 55.1-xxx. Landlord to provide locks and peepholes when required by local ordinance.

The governing body of any ~~county, city or town~~ locality may require by ordinance that any landlord who rents five or more dwelling units in any one building shall install:

1. Dead-bolt locks ~~which~~ that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new ~~multi-family~~ multifamily construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole~~.~~;

2. Manufacturer's locks ~~which~~ that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level ~~or levels~~ designated in the ordinance~~.~~; and

3. Locking devices ~~which~~ that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

Drafting note: "County, city or town" is replaced with "locality" on the basis of § 1-221, which states that "'locality' means a county, city, or town." The plural "or levels" is stricken in subdivision 2 on the basis of § 1-277, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-248.13:2~~ 55.1-xxx. Access of tenant to cable, satellite, and other television facilities.

No landlord shall demand or accept payment of any fee, charge, or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service, or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider~~,~~ designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided~~,~~ and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange ~~therefor~~ for such service unless the landlord is itself the provider of the service~~. Nor~~, nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained ~~herein~~ in this section shall prohibit a landlord from (i) requiring that the provider of such service and the tenant bear the entire cost of the installation, operation, or removal of the facilities incident ~~thereto,~~ to such service or ~~prohibit a landlord from~~ (ii) demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation, or removal.

Drafting note: Technical changes.

§ ~~55-248.13:3~~ 55.1-xxx. Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than ~~forty-eight~~ 48 hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit, unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the ~~forty-eight-hour~~ 48-hour notice is not required. Tenants who have

concerns about specific insecticides or pesticides shall notify the landlord in writing no less than ~~twenty-four~~ 24 hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord~~,~~ and, if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied ~~forty-eight at least~~ no less than 48 hours prior to the application.

Drafting note: Technical changes.

§ ~~55-248.14~~ 55.1-xxx. Limitation of liability.

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement ~~and~~, this chapter, and Chapter XX [1] (§ 55.1-xxx et seq.) as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that include a dwelling unit is relieved of liability under the rental agreement ~~and~~, this chapter, and Chapter XX [1] as to events occurring after written notice to the tenant of the termination of his management.

Drafting note: References to Chapter XX [1] are added because that chapter contains liability provisions that are applicable to landlords of all residential tenancies, including tenancies governed by the VRLTA. Technical changes.

§ ~~55-248.15~~ 55.1-xxx. Tenancy at will; effect of notice of change of terms or provisions of tenancy.

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

Drafting note: No change.

§ ~~55-248.15:1~~ 55.1-xxx. Security deposits.

A. ~~A~~ No landlord may ~~not~~ demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as ~~hereinafter~~ provided in this section, may be applied ~~solely~~ by the landlord solely to (i) ~~to~~ the payment of accrued rent ~~and~~, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) ~~to~~ the payment of the amount of damages ~~which~~ that the landlord has suffered by reason of the tenant's noncompliance with § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter], less reasonable wear and tear; or (iii) ~~to~~ other damages or charges as provided in the rental agreement. The security deposit and any deductions, damages, and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due to the tenant, within 45 days after termination of the tenancy and delivery of possession to the landlord.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. Regardless of the number of tenants subject to a rental agreement, if a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period pursuant to subsection A, the landlord shall, within a reasonable period of time not to exceed 90 days, escheat the balance of such security deposit and any other moneys due to the tenant to the Commonwealth, which sums shall be ~~sent to the Virginia Department of Housing and Community Development, payable to the State Treasurer, and credited to the Virginia Housing Trust Fund established pursuant to § 36-142~~ paid to the Literary Fund. Upon payment to the Commonwealth, the landlord shall have no further liability to any tenant relative to the security deposit. If the landlord or managing agent is a real estate licensee, compliance with this

~~paragraph~~ subsection shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

C. Nothing in this section shall be construed ~~by a court of law or otherwise~~ as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided that the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days ~~thereafter~~, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have ~~so~~ advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), (ii) a ~~vacating~~ written notice to the tenant confirming the vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § ~~55-248.6~~ 55.1-xxx.

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period~~, or if~~. If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

E. The landlord shall notify the tenant in writing of any deductions provided by this ~~subsection~~ section to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection ~~B~~ F. ~~Such~~ No such notification shall ~~not~~ be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case~~,~~ the court shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a ~~third party~~ third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this ~~paragraph~~ subsection, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or Chapter XX [1] (§ 55.1-xxx et seq.). The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

~~B.~~F. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section ~~which~~ that the landlord has made by reason of a tenant's noncompliance with § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

~~C.~~G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall make reasonable efforts to advise the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall, in writing, so advise the landlord ~~in writing,~~ who~~,~~ in turn~~,~~ shall notify the tenant of the ~~time and~~ date and time of the inspection, which must be made within 72 hours of delivery of possession. Upon completion of the inspection attended by the tenant, the landlord shall furnish the tenant with an itemized list of damages to the dwelling unit known to exist at the time of the inspection.

~~D.~~H. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

I. If the rental agreement is terminated due to the landlord's noncompliance pursuant to § 55.1-xxx [§ 55-248.21], the landlord shall return the security deposit in accordance with this section.

J. The maintenance of an action by a landlord pursuant to § 55.1-xxx [§ 55-248.39] does not release the landlord from liability under this section.

K. If a rental agreement is terminated pursuant to § 55.1-xxx [§ 55-248.26], the landlord shall return all of the security deposit in accordance with this section.

Drafting note: Existing § 55-248.15:1 is retained in this article of the VRLTA, with the addition of subsection notation for clarity. In the subsection B, the fund to which security deposits that escheat to the Commonwealth are paid is changed from the Virginia

Housing Trust Fund to the Literary Fund in accordance with Art. VIII, Sec 8 of the Virginia Constitution, which states that all money escheated to the Commonwealth must be credited to the Literary Fund. In proposed subsection C, the existing phrase "by a court of law or otherwise" is stricken as unnecessary. In proposed subsection C, the existing term "vacating notice" is changed to "written notice . . . confirming the vacating date" because "vacating notice" was undefined and unclear. Language is relocated (i) to proposed subsection I from existing § 55-248.21, (ii) to proposed subsection J from existing § 55-248.39, and (iii) to proposed subsection K from existing § 55-248.26. These security deposit provisions are applicable only to residential tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-248.15:2. Repealed.~~

Drafting note: Repealed by Acts 2014, c. 651, cl. 2, effective January 1, 2015.

Article 3.

Tenant Obligations.

Drafting note: Existing §§ 55-248.17, 55-248.18, 55-248.18:2, 55-248.19, and 55-248.20 in Article 3 of the VRLTA are retained as proposed Article 3 of the VRLTA. Existing §§ 55-248.16 and 55-248.18:1 are relocated to proposed Article 4 of Chapter XX [1] because they apply to all residential tenancies.

§ 55.1-xxx. Tenant to maintain dwelling unit; additional obligations.

In addition to the provisions of the rental agreement and the tenant obligations provided in § 55.1-xxx [§ 55-248.16], the tenant:

1. Shall keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and promptly notify the landlord of the existence of any insects or pests;

2. Shall remove from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner and place such items in the appropriate receptacles provided by the landlord pursuant to § 55.1-xxx [§ 55-248.13], if such disposal is on the premises;

3. Shall use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

4. Shall not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.); and

5. Shall not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative and shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Uniform Statewide Building Code (§ 36-97 et seq.).

Drafting note: Subdivisions A 3, 4, 6, 8, and 9 of existing § 55-248.16, which are applicable only to residential tenancies that are covered by the VRLTA, are relocated as proposed § 55.1-xxx [this section].

§ ~~55-248.17~~ 55.1-xxx. Rules and regulations.

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenants' use and occupancy of the premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises~~,~~; preserve the landlord's property from abusive use; or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he ~~must or must not~~ is required to do or prohibited from doing to comply;

5. It is not for the purpose of evading the obligations of the landlord; and

6. The tenant has been provided with a copy of the rules and regulations or changes ~~thereto~~ to such rules and regulations at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not ~~work~~ constitute a substantial modification of his bargain. If a rule or regulation ~~is~~ adopted or changed after the tenant enters into the rental agreement ~~that~~ does ~~work~~ constitute a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

Drafting note: Technical changes.

§ ~~55-248.18~~ 55.1-xxx. Access; consent; correction of nonemergency conditions; relocation of tenant.

A. 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~~ agreed-upon repairs, decorations, alterations, or improvements~~,~~; supply necessary or ~~agreed~~ agreed-upon services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged

item, or cleaning in accordance with § ~~55-248.32~~ 55.1-xxx, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, Chapter XX [1], or other applicable law, the landlord may send a written notice of termination pursuant to § ~~55-248.31~~ 55.1-xxx. If the rental agreement so provides, and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

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'~~ 24 hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § ~~55-248.13~~ 55.1-xxx or 55.1-xxx [Landlord to maintain fit premises; additional obligation of the landlord regarding carbon monoxide alarms]; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs

to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the nonemergency property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing ~~herein~~ in this section shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing ~~herein~~ in this section shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this ~~section~~ subsection.

C. The landlord has no other right to access except by court order or that permitted by §§ ~~55-248.32 and 55-248.33~~ 55.1-xxx and 55.1-xxx or if the tenant has abandoned or surrendered the premises.

D. The tenant may install~~,~~ within the dwelling unit~~,~~ new ~~burglary prevention~~ security systems that the tenant may believe necessary to ensure his safety, including chain latch devices approved by the landlord~~,~~ and fire detection devices~~, that the tenant may believe necessary to ensure his safety~~, provided that:

1. Installation does no permanent damage to any part of the dwelling unit~~.~~;

2. A duplicate of all keys and instructions ~~of how to operate~~ for the operation of all devices are given to the landlord~~.~~; and

3. Upon termination of the tenancy, the tenant ~~shall be~~ is responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of the tenant, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code (§ 36-97 et seq.).

Drafting note: "Burglary prevention" is modernized to the preferred term "security system." Technical changes are made.

§ ~~55-248.18:2~~ 55.1-xxx. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § ~~55-248.4~~ 55.1-xxx for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant~~,~~ or (ii) a hotel room, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where ~~or when~~ the landlord has remediated a mold condition in accordance with professional standards as defined in § ~~55-248.4~~ 55.1-xxx. The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § ~~55-248.16~~ 55.1-xxx.

Drafting note: Technical change.

§ ~~55-248.19~~ 55.1-xxx. Use and occupancy by tenant.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence.

Drafting note: No change.

§ ~~55-248.20~~ 55.1-xxx. Tenant to surrender possession of dwelling unit.

At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical change.

Article 4.

Tenant Remedies.

Drafting note: Existing §§ 55-248.22, 55-248.23, 55-248.24, 55-248.25, and 55-248.27 in Article 4 of the VRLTA are retained as proposed Article 4 of the VRLTA. Existing §§ 55-248.21, 55-248.21:1, 55-248.21:2, 55-248.25:1, and 55-248.26 are relocated to proposed Article 5 of Chapter XX [1] because they apply to all residential tenancies.

§ ~~55-248.22~~ 55.1-xxx. Failure to deliver possession.

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, then rent abates until possession is delivered, and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord ~~and,~~ upon which termination~~,~~ the landlord shall return all prepaid rent and security deposits~~;~~, or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical changes.

§ ~~55-248.23~~ 55.1-xxx. Wrongful failure to supply ~~heat, water, hot water or~~ an essential ~~services~~ service.

A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply ~~heat, running water, hot water, electricity, gas or other~~ an essential

service, the tenant ~~must~~ shall serve a written notice on the landlord specifying the breach, if acting under this section, and, in such event~~,~~ and after ~~a~~ allowing the landlord reasonable time ~~allowed the landlord~~ to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § ~~55-248.21~~ 55.1-xxx as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, ~~a member of his family or other person on the premises with his consent~~ an authorized occupant, or a guest or invitee of the tenant.

Drafting note: The defined term "essential service" incorporates the named elements of and replaces the phrase "heat, running water, hot water, electricity, gas, or other." Language in subsection B is amended to use defined terms "authorized occupant" and "guest or invitee." Technical changes are made.

§ ~~55-248.24~~ 55.1-xxx. Fire or casualty damage.

If the dwelling unit or premises ~~are~~ is damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and, within 14 days thereafter, ~~serve~~ serving on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating~~; or if~~. If continued occupancy is lawful, § ~~55-226~~ 55.1-xxx shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement ~~based upon~~ on the basis of the landlord's determination that such damage requires the removal of the tenant and that the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § ~~55-248.15:1~~ 55.1-xxx and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, ~~tenant's guests, invitees or authorized occupants were~~ an authorized occupant, or a guest or invitee of the tenant was the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual damages sustained pursuant to § ~~55-248.35~~ 55.1-xxx. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

Drafting note: Technical changes.

§ ~~55-248.25~~ 55.1-xxx. Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises~~,~~ a condition ~~which~~ that constitutes, or will constitute, a fire hazard or a serious threat to the life, health, or safety of the occupants ~~thereof~~ of the dwelling unit, including ~~but not limited to~~ (i) a lack of heat ~~or~~, running water ~~or of~~, light ~~or of~~, electricity, or adequate sewage disposal facilities ~~or~~; (ii) an infestation of rodents~~,~~; or (iii) a condition ~~which~~ that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for

which he was served a written notice of the ~~aforesaid~~ condition ~~or conditions~~ by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or ~~municipal~~ local agency~~, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same~~. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of ~~thirty~~ 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes that (i) the conditions alleged in the defense do not in fact exist; ~~or~~ (ii) such conditions have been removed or remedied; ~~or~~ (iii) such conditions have been caused by the tenant ~~or~~, his guest or invitee, members of the family of such tenant, or ~~of his or their guests~~ a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and~~, thereafter,~~ shall ~~pass such~~ issue any order as may be required, including any one or more of the following:

1. ~~An order to set off to the tenant as determined by the court~~ Reducing rent in such amount as ~~may~~ the court determines to be equitable to represent the existence of any condition ~~set forth~~ in subsection A ~~which is found by the court to exist~~;

2. ~~Terminate~~ Terminating the rental agreement or ~~order~~ ordering the surrender of the premises to the landlord; or

3. ~~Refer~~ Referring any matter before the court to the proper state or ~~municipal~~ local agency for investigation and report and ~~grant~~ granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant

shall deposit with the court any rents ~~which~~ that will become due during the period of continuance, to be held by the court pending its further order, or in its discretion, the court may use such funds to (i) pay a mortgage on the property in order to stay a foreclosure, ~~to~~ (ii) pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or ~~to~~ (iii) remedy any condition set forth in subsection A ~~which~~ that is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court~~, in its discretion,~~ may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable ~~attorney's~~ attorney fees.

Drafting note: The phrase "but not limited to" is deleted after the term "including" in subsection A on the basis of § 1-218, which states that throughout the Code the term "'Includes' means includes, but not limited to." The phrase "or conditions" is deleted after the term "condition" in subdivision A 1 on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is reworded for clarity and technical changes are made.

§ ~~55-248.27~~ 55.1-xxx. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises~~,~~ a condition ~~or conditions which constitute~~ that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law~~,~~ or ~~which~~ that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of the occupants ~~thereof~~ of the premises, including ~~but not limited to,~~ (i) a lack of heat or hot or cold running water, except ~~if~~ where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; ~~or~~ (ii) a lack of light, electricity, or adequate sewage disposal facilities; ~~or~~ (iii) an infestation of rodents, except if the property is a one-family dwelling; or ~~of~~ (iv) the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has

notice of such paint. The tenant may file such an assertion in a general district court ~~wherein~~ in which the premises ~~are~~ is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant ~~of the conditions described in subsection A,~~ or was notified of such ~~conditions~~ condition by a violation or condemnation notice from an appropriate state or ~~municipal~~ local agency~~, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same~~. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of ~~thirty~~ 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due ~~thereunder~~ under the rental agreement, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to ~~a declaration~~ an assertion made pursuant to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions alleged by the tenant do not in fact exist, ~~or~~ (ii) such conditions have been removed or remedied, ~~or~~ (iii) such conditions have been caused by the tenant ~~or~~, his guest or invitee, members of ~~his~~ the family ~~or his or their invitees or licensees~~ of such tenant, or a guest or invitee of such family member, or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include~~, but is not limited to,~~ any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the ~~premises surrendered~~ surrender of the premises to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of ~~the~~ any condition ~~or conditions~~ found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or ~~municipal~~ local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court ~~rents,~~ within five days of date due under the rental agreement, subject to any abatement under this section~~, which~~ rents that become due during the period of the continuance, to be held by the court pending its further order;

7. ~~In its discretion, ordering~~ Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. ~~In its discretion, ordering~~ Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

E. Notwithstanding any provision of ~~this subsection~~ subsection D, where an escrow account is established by the court and the condition ~~or conditions are~~ is not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end ~~thereof~~ of the period, the condition ~~or conditions have~~ has not been remedied.

~~E.~~F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within ~~fifteen~~ 15 calendar days from the date of service of process on the landlord as authorized by § ~~55-248.12~~ 55.1-xxx, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities, or any other condition ~~which~~ that constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this ~~article~~ chapter or Chapter XX [1] (§ 55.1-xxx et seq.) as to that breach.

Drafting note: The phrase "but not limited to" is deleted after the term "including" and "include" in subsections A and D on the basis of § 1-218, which states that throughout the Code the term "'Includes' means includes, but not limited to." In subdivision B 1, "or his agent" is added after "landlord" for consistency with subsection A 1 of § 55.1-xxx [§ 55-248.25]. In subsection C, "declaration" is changed to "assertion" to conform to the

language used in subsection A. In subsection C, the term "licensee" is stricken and the term "guest or invitee" added on the basis of the definition in § 55.1-xxx [§ 55-248.4]. The phrase "or conditions" is stricken after the term "condition" in subdivision D 4 and I subsection E on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is reworded for clarity and technical changes are made.

~~§§ 55-248.28 through 55-248.30. Repealed.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

Article 5.

Landlord Remedies.

Drafting note: Existing §§ 55-248.31, 55-248.31:01, 55-248.31:1, 55-248.32, 55-248.33, 55-248.34:1, 55-248.35, 55-248.37, 55-248.38:1, 55-248.38:2, and 55-248.38:3 in Article 5 of the VRLTA are retained as proposed Article 5 of the VRLTA. Existing § 55-248.36 is relocated to proposed Article 5 of Chapter XX [1] because it applies to all residential tenancies.

§ ~~55-248.31~~ 55.1-xxx. Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), if there is a material noncompliance by the tenant with the rental agreement or a violation of § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach ~~which~~ that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary ~~contained elsewhere in this chapter~~, when a breach of the tenant's obligations under this chapter or Chapter XX [1] (§ 55.1-xxx et seq.) or the rental agreement involves or constitutes a criminal or a willful act~~, which~~ that is not remediable and ~~which~~ that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, ~~the tenant's~~ an authorized ~~occupants~~ occupant, or ~~the tenant's guests or invitees~~ a guest or invitee of the tenant~~,~~ shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by ~~a tenant's~~ an authorized ~~occupants, or guests or invitees~~ occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises ~~which~~ that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim

period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out ~~herein~~ in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § ~~55-248.31:01 based upon~~ 55.1-xxx on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1~~,~~ or 16.1-279.1~~,~~ or subsection B of § 20-103, the lease shall not terminate solely due ~~solely~~ to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails ~~promptly~~ to promptly notify the landlord within 24 hours ~~thereafter~~ that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event ~~more~~ later than ~~7~~ seven days ~~thereafter~~. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § ~~55-248.16,~~ 55.1-xxx and is subject to termination of the tenancy pursuant to the lease and this chapter and Chapter XX [1] (§ 55.1-xxx et seq.).

E. If the tenant has been served with a prior written notice ~~which~~ that required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent

breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § ~~55-248.35~~ 55.1-xxx. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § ~~55-248.35~~ 55.1-xxx. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § ~~55-248.6~~ 55.1-xxx, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter]. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether ~~or not~~ a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted

for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages for physical damage to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement~~,~~; (ii) other charges and fees as contracted for in the rental agreement~~,~~; (iii) late charges contracted for in the rental agreement~~,~~; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable~~,~~; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law~~,~~; and (vi) damages for physical damage to the dwelling unit or premises.

Drafting note: In subsections G and H, the phrase "for physical damage" is added after "damages" to clarify for what the landlord is entitled to recover. Technical changes are made.

§ ~~55-248.31:01~~ 55.1-xxx. Barring guest or invitee of ~~tenants~~ a tenant.

A. A guest or invitee of a tenant may be barred from the premises by the landlord upon written notice served personally upon the guest or invitee of the tenant for conduct on the landlord's property where the premises are located ~~which~~ that violates the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice ~~must~~ shall be served upon the tenant in accordance with this chapter. The notice shall describe the conduct of the guest or invitee ~~which~~ that is the basis for the landlord's action.

B. In addition to the remedies against the tenant authorized by this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), a landlord may apply to the magistrate for a warrant for trespass, provided that the guest or invitee has been served in accordance with subsection A.

C. The tenant may file a tenant's assertion, in accordance with § ~~55-248.27~~ 55.1-xxx, requesting that the general district court review the landlord's action to bar the guest or invitee.

Drafting note: Technical changes.

§ ~~55-248.31:1~~ 55.1-xxx. Sheriffs authorized to serve certain notices; ~~fees therefor~~ fee for service.

The sheriff of any county or city, upon request, may deliver any notice to a tenant on behalf of a landlord or lessor under the provisions of § ~~55-225~~ 55.1-xxx or ~~§ 55-248.31~~ 55.1-xxx. For this service, the sheriff shall be allowed a fee not to exceed ~~twelve dollars~~ $12.

Drafting note: Technical changes.

§ ~~55-248.32~~ 55.1-xxx. Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner~~,~~ and submit an itemized bill for the actual and reasonable cost ~~therefor~~ for such work to the tenant, which shall be due as rent on the next rent due date~~,~~ or, if the rental agreement has terminated, for immediate payment.

In case of emergency, the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost ~~therefor~~ for such work to the tenant, which shall be due as rent on the next rent due date~~,~~ or, if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning~~,~~ or may engage a third party to do so.

Drafting note: Technical changes.

§ ~~55-248.33~~ 55.1-xxx. Remedies for absence, nonuse, and abandonment.

If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises ~~have~~ has been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § ~~55-248.6~~ 55.1-xxx requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be a rebuttable presumption that the premises ~~have~~ has been abandoned by the tenant, and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § ~~55-248.35~~ 55.1-xxx.

Drafting note: Technical changes.

~~§ 55-248.34. Repealed.~~

Drafting note: Repealed by Acts 2003, c. 427, cl. 2

§ ~~55-248.34:1~~ 55.1-xxx. Landlord's acceptance of rent with reservation.

A. ~~Provided~~ If the landlord has given written notice to the tenant that the rent will be accepted with reservation, the landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § ~~55-248.38:2~~ 55.1-xxx. Such notice shall be included in a written termination notice given by the landlord to the tenant in accordance with § ~~55-248.31~~ 55.1-xxx or in a separate written notice given by the landlord to the tenant within five business days of receipt of

the rent. Unless the landlord has given such notice in a termination notice in accordance with § ~~55-248.31~~ 55.1-xxx, the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required ~~herein~~ in this section for the portion of the rent paid by the tenant.

B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to § ~~55-248.38:2~~ 55.1-xxx, the landlord may accept all amounts owed to the landlord by the tenant, including full payment of any money judgment, award of attorney fees and court costs, and all subsequent rents that may be paid prior to eviction, and proceed with eviction, provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees, and court costs~~,~~ and of all subsequent rents that may be paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required ~~herein~~ in this section for the portion of the rent paid by the tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to § 8.01-471.

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

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

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term ~~thereof~~ of the rental agreement.

Drafting note: Technical changes.

§ ~~55-248.35~~ 55.1-xxx. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable

~~attorney's~~ attorney fees as provided in § ~~55-248.31~~ 55.1-xxx, and the cost of service of any notice under § ~~55-225~~ 55.1-xxx or ~~§ 55-248.31~~ 55.1-xxx or process by a sheriff or private process server, which cost shall not exceed the amount authorized by § ~~55-248.31:1~~ 55.1-xxx, ~~which~~ and such claims may be enforced, without limitation, by ~~the institution of~~ initiating an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for ~~such~~ rent ~~as~~ that would have accrued until the expiration of the term ~~thereof~~ of the rental agreement or until a tenancy pursuant to a new rental agreement commences, whichever occurs first ~~occurs;~~, provided that nothing ~~herein~~ contained in this section shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined ~~herein~~ in this section, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § ~~55-248.15:1~~ 55.1-xxx.

Drafting note: Technical changes.

§ ~~55-248.37~~ 55.1-xxx. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § ~~55-248.35~~ 55.1-xxx shall control.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § ~~55-248.7~~ 55.1-xxx applies.

C. In the event of termination of a rental agreement ~~and~~ where the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

Drafting note: Technical change.

~~§ 55-248.38. Repealed.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

§ ~~55-248.38:1~~ 55.1-xxx. Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or ~~in~~ any storage area provided by the landlord~~,~~ after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided that

he has~~:~~ given (i) ~~given~~ a termination notice to the tenant in accordance with this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or,~~ the premises, or the storage area would be disposed of within the 24-hour period after termination~~,~~; (ii) ~~given~~ written notice to the tenant in accordance with § ~~55-248.33~~ 55.1-xxx, ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or,~~ the premises, or the storage area would be disposed of within the 24-hour period after expiration of the seven-day notice period~~,~~; or (iii) ~~given~~ a separate written notice to the tenant, ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or,~~ the premises, or the storage area would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § ~~55-248.6~~ 55.1-xxx. The tenant shall have the right to remove his personal property from the dwelling unit ~~or,~~ the premises, or the storage area at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply ~~same~~ the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing, or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § ~~55-248.15:1~~ 55.1-xxx. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in

accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

Drafting note: The language "or the storage area" is included throughout for consistency with the first sentence of the section. Technical changes are made.

§ ~~55-248.38:2~~ 55.1-xxx. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or ~~from~~ any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled ~~thereto~~ to such dwelling unit, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction ~~from the landlord's~~ or at such other reasonable times until the landlord has disposed of the property as provided ~~herein~~ in this section. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided ~~herein~~ in this section, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If

the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply ~~same~~ the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as a security deposit under ~~applicable law~~ the provisions of § 55.1-xxx [§ 55-248.15:1].

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in ~~the said~~ such notice a copy of this statute attached to, or made a part of, ~~this~~ the notice.

Drafting note: In the third paragraph, a reference to § 55.1-xxx [§ 55-248.15:1] is included for consistency with the preceding section. Technical changes.

§ ~~55-248.38:3~~ 55.1-xxx. Disposal of property of deceased tenants.

A. If a tenant~~,~~ who is the sole occupant of the dwelling unit~~,~~ dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § ~~55-248.6~~ 55.1-xxx if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § ~~55-248.38:1~~ 55.1-xxx, if not claimed within 10 days.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling

unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant~~,~~ who is the sole occupant of the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under §~~ 55-248.35~~ 55.1-xxx, and the landlord shall mitigate such damages~~ as provided thereunder~~.

Drafting note: Technical change.

~~Article 6.~~

~~Retaliatory Action.~~

Drafting note: The designation for existing Article 6 is stricken because its provisions are relocated: Existing § 55-248.39 is relocated to proposed Article 3 of Chapter XX [1], and existing § 55-248.40 is relocated to proposed Article 1 of this chapter.

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VIRGINIA CODE COMMISSION
September 19, 2016

CODE COMMISSION POLICIES FOR CODIFICATION

I. CODIFICATION OF SECTION 1 BILLS, ENACTMENTS, AUTHORITIES, AND COMPACTS*

A. Section 1 bills and enactments *(§§ 30-146 and 30-148)*

Pursuant to §§ 30-146 and 30-148 of the Code of Virginia, codify provisions from the acts when the provisions have general or permanent application.

B. Authorities

Codify an authority only when it has (i) an unlimited duration of existence and (ii) more than local or regional application.

C. Compacts *(§ 30-154.1)*

Each compact will be assigned a Code section number in accordance with its proper title location.

II. STATUTES OMITTED FROM CODE PUBLICATION*

Code sections "not set out" *(§ 30-149)*

1. Exclude provisions that do not have general or permanent application.
2. Exclude policy statements.
3. Exclude sections that establish the purpose of the legislation or legislative intent.

Note: The general policy has been to exclude from the Code the full text of sections determined not to be general in nature. Below is an example of how a "not set out" section appears in the online Code:

§ 36-85.4. Purpose and application [Not set out].

Not set out. (1986, c. 37.)

*See attached explanatory note from 1948 Code of Virginia recodification report

GENERAL EXPLANATORY NOTE

STATUTES INCLUDED AND STATUTES OMITTED.

The general policy of the Commission has been to include in the proposed Code only statutes of a general nature and to leave out special and local acts However, acts, by their terms applicable only to particular counties and cities, which appeared in the Code of 1919, have been retained, as also have been retained a number of statutes, whether contained in the Code of 1919 or subsequently enacted, which relate to the courts or the officers and government of particular cities and counties. Acts which except from their application one or two particular counties or cities, presumably intended to be general laws, have been included. Acts referring to particular rivers and tidal waters or other geographic features of the State, to particular educational institutions and other public agencies, and to the state parks, have been considered as general acts and have been included.

It has been the intention of the Commission to omit statutes and parts of statutes which have been in whole or in part repealed, expressly or by clear implication, and statutes which have expired by their own terms, or have been superseded by more recent legislation, or have otherwise become obsolete. Statutes which are now in force, but which by their own terms will expire before it is contemplated that the proposed Code, if adopted, can become effective, have been omitted.

Statutes which have, by the Supreme Court of Appeals of Virginia, been declared unconstitutional in their entirety have been omitted, except in one or two instances where the Assembly has with apparent deliberate intent re-enacted the statute after the decision of the Court. Statutes which have been declared unconstitutional only as applied to certain persons or circumstances have been included. Merely consequential amendments of statutes, required on account of amendments to the Constitution of Virginia, have been made.

Most preambles and preliminary recitals, declarations of emergency and of legislative policy have been omitted. Sometimes, however, preliminary matter, particularly legislative determinations of fact, have been retained, where such preliminary matter has been referred to in the body of the statute, or where for some other reason it has seemed desirable to retain it.

Clauses declaring the provisions of statutes to be separable or severable in relation to their validity or constitutionality, which only declare the existence of a principle deemed to be inherent in a code, have been omitted.

Clauses which expressly repeal specific statutes, their object being accomplished by omission of the statutes specified, have been omitted. General repealer clauses, which do not expressly repeal specified statutes, but which purport to repeal all inconsistent statutes, have likewise been omitted.

Many statutes which the Commission thought it unnecessary to print in full, but which the Commission also thought should not be repealed by omission from the Code, have not been printed but have been continued by reference only, a practice freely used by the Revisors of the Code of 1919. Examples of such statutes are some of the numerous statutes, which, although general in form, are in fact applicable only to one or two counties or cities classified on the basis of

population or land area; statutes providing for the issuance of bonds, where no more bonds may be issued, but where some of the bonds already issued are still outstanding; statutes which by their terms are to become effective only upon the happening of some contingency, which has not yet occurred, and seems unlikely to occur; and statutes which have been to a very large extent superseded by more recent legislation, but not to such an extent as the Commission feels would justify their omission. The statutes continued by reference have not been collected in one place, but have been so continued by short sections inserted throughout the Code at the places where the statutes so continued would have appeared if printed in full.

Acts declared by their terms to be in effect only upon the happening of some contingency have in instances where the contingency has occurred been printed as presently effective statutes, without any reference to the contingency. If the contingency has not yet occurred, the act, where printed at all rather than continued by reference, has been printed in its present conditional form.

THE TAX CODE, AND OTHER "CODES".

The Tax Code of Virginia has been incorporated into the body of the proposed Code, in Title 58, Taxation, and other statutes on special subjects heretofore called "Codes", such as The Motor Vehicle Code and The Banking Code, have in the proposed Code been called "Laws" or "Acts", so that if the Code now submitted is adopted, the only "Code" extant in Virginia will be the Code of Virginia.

STATUTES FOR THE REORGANIZATION OF THE GOVERNMENT.

The various acts concerning the general reorganization of the state government adopted at the extra session of 1927, and thereafter, and similar less extensive statutes creating or abolishing offices and boards or commissions, and transferring administrative powers and duties, have been given effect throughout the proposed Code. Some of the provisions of these statutes have been printed, and some of such provisions, where it seemed more appropriate, have not been printed, but have been made effective by alteration of the language of other statutes affected by them. In some instances the statute affected by the reorganization statutes cannot be cured by alteration of the language, and has plainly been repealed. Such statutes have been omitted. Examples are the numerous sections in the Code of 1919 which direct the payment of moneys into the State Treasury to the credit of special funds, most of which special funds have been abolished, and sections which provide special appropriations. In making the necessary alterations in statutes affecting the administration of the state government, the Commission has freely consulted the state officers charged with the duties of administration, and has given considerable weight to existing administrative practices.