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CHAPTER XX. [6]

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COMMERCIAL TENANCIES.

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Drafting note: Existing Chapter 13 of Title 55 governs both commercial and residential tenancies. Subtitle III of Title 55.1 proposes to segregate or duplicate, as appropriate, the provisions of existing Chapter 13 as follows: Proposed Chapters XX [1] and XX [3] set out all provisions of existing Chapter 13 applicable to residential tenancies and remove references to commercial tenancies from duplicated provisions. This proposed Chapter XX [6] sets out all provisions of existing Chapter 13 applicable to commercial tenancies and removes references to residential tenancies from duplicated provisions. The Title 55 source of each section shown as new language, and the location of its duplicate residential-tenancy counterpart in proposed Title 55.1, is described in individual section drafting notes.

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Article 1.

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In General.

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

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§ 55.1-xxx. Applicability.

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A. As used in this chapter, unless the context requires a different meaning, "commercial tenancy" means the rental of any real estate for purposes other than residential use, including business, industrial, or agricultural purposes.

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B. The provisions of this chapter apply to all commercial tenancies unless a provision of the rental agreement provides otherwise.

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Drafting note: There is no existing definition of "commercial tenancy"; therefore, the proposed definition of "commercial tenancy" is adapted from existing § 55-248.5, which states what types of tenancies are not residential tenancies.

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

28 Any nonresident person as the term "person" is defined in § 55.1-xxx [definitions] of the
29 Commonwealth who owns and leases commercial real property within the Commonwealth shall
30 have and continuously maintain an agent who is a resident and maintains a business office
31 within the Commonwealth. Every lease executed by or on behalf of nonresident property
32 owners regarding any such real property shall specifically designate such agent and the agent's
33 office address for the purpose of service of any process, notice, order, or demand required or
34 permitted by law to be served upon such nonresident property owner.

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

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

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

49 **Drafting note: Existing § 55-218.1 is duplicated here and in Chapter XX [1] as §**
50 **55.1-xxx because it applies to both residential and commercial tenancies. Language is**
51 **updated to reflect that this section is only applicable to commercial tenancies. Technical**
52 **changes are made.**

53 § 55.1-xxx. Apportionment on purchase of part of land by holder of rent.

54 When the holder of a rent purchases part of the land out of which the same issues, the
55 rent shall be apportioned in like manner as if the land had come to him by descent, and when the
56 holder of land, being part of land out of which a rent shall be issuing, purchases such rent or part
57 of it, the rent so purchased shall be apportioned as provided in this section.

58 **Drafting note: Existing § 55-219 is duplicated here and in Chapter XX [1] as § 55.1-**
59 **xxx because it applies to both residential and commercial tenancies. A technical change is**
60 **made.**

61 § 55.1-xxx. Energy submetering equipment; energy allocation equipment; water and
62 sewer submetering equipment; ratio utility billings systems; local government fees.

63 A. As used in this section:

64 "Building" means all of the individual units served through the same utility-owned meter
65 within a commercial building.

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

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

70 "Local government fees" means any local government charges or fees assessed against a
71 commercial building, including stormwater, recycling, trash collection, elevator testing, or fire
72 or life safety testing.

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

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

81 when such equipment is not owned or controlled by the utility or other provider of water or
82 sewer service that provides service to the building in which the nonresidential rental unit is
83 located.

84 B. Energy submetering equipment, energy allocation equipment, water and sewer
85 submetering equipment, or a ratio utility billing system may be used in a commercial building if
86 clearly stated in the rental agreement or lease for the leased premises. All energy submetering
87 equipment and energy allocation equipment shall meet the requirements and standards
88 established and enforced by the State Corporation Commission pursuant to § 56-245.3.

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

101 D. If a ratio utility billing system is used in any building, in lieu of increasing the rent
102 the owner, manager, or operator of the building may employ such a program that utilizes a
103 mathematical formula for allocating, among the tenants in a building, the actual or anticipated
104 water, sewer, electrical, or natural gas billings billed to the building owner from a third-party
105 provider of the utility service. The owner, manager, or operator of the building may charge and
106 collect from the tenant additional service charges, including monthly billing fees, account set-up
107 fees, or account move-out fees, to cover the actual costs of administrative expenses and billings

108 charged to the building owner, manager, or operator by a third-party provider of such services,
109 provided that such charges are agreed to by the building owner and the tenant in the rental
110 agreement or lease. The building owner may require the tenant to pay a late charge of up to \$5 if
111 the tenant fails to make payment when due, which shall not be less than 15 days following the
112 date of mailing or delivery of the bill sent pursuant to this section.

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

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

127 G. Notwithstanding any enforcement action undertaken by the State Corporation
128 Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any
129 private right of action resulting from any breach of the rental agreement or lease terms required
130 by this section or § 56-245.3, if applicable, to the same extent as such actions may be
131 maintained for breach of other terms of the rental agreement or lease under this chapter, if
132 applicable. The use of energy submetering equipment, energy allocation equipment, water and
133 sewer submetering equipment, or a ratio utility billing system is not within the jurisdiction of

134 the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of
135 Title 3.2.

136 H. In lieu of increasing the rent, the owner, manager, or operator of a commercial
137 building may employ a program that utilizes a mathematical formula for allocating the actual or
138 anticipated local government fees billed to the building owner among the tenants in such
139 building if clearly stated in the rental agreement or lease for the leased premises. Permitted
140 allocation methods may include formulas based upon square footage, occupancy, number of
141 bedrooms, or some other specific method agreed to by the building owner and the tenant in the
142 rental agreement or lease. Such owner, manager, or operator of a commercial building may also
143 charge and collect from each tenant additional service charges, including monthly billing fees,
144 account set-up fees, or account move-out fees, to cover the actual costs of administrative
145 expenses for administration of such a program.

146 I. Nothing in this section shall be construed to prohibit an owner, manager, or operator
147 of a commercial building from including water, sewer, electrical, natural gas, or other utilities in
148 the amount of rent as specified in the rental agreement or lease.

149 **Drafting note: Existing § 55-226.2 is duplicated here and in Chapter XX [1] as §**
150 **55.1-xxx because it applies to both residential and commercial tenancies. Language was**
151 **updated to delete references to residential tenancies, including references to campgrounds,**
152 **manufactured housing units, and dwelling units, all of which are covered by § 55.1-xxx.**
153 **Technical changes are made.**

154 § 55.1-xxx. Transfer of deposits upon purchase.

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

158 **Drafting note: Existing § 55-507 is duplicated here and in Chapter XX [1] as § 55.1-**
159 **xxx because it applies to both residential and commercial tenancies.**

160 Article 2.

161 Assignments.

162 **Drafting note: Proposed Article 2 duplicates sections from existing Chapter 13**
163 **concerning assignments of leases that are applicable to commercial tenancies. These**
164 **sections also appear in Chapter XX [1], as they are also applicable to residential tenancies.**

165 § 55.1-xxx. Grantees and assignees have same rights against lessees as lessors.

166 A grantee or assignee of any land rented, or of the reversion thereof, and his heirs,
167 personal representative, or assigns shall enjoy against the lessee, or his personal representative
168 or assigns, the like advantage, by action or entry for any forfeiture or by action upon any
169 covenant or promise in the lease, that the grantor, assignor, or lessor, or his heirs, might have
170 enjoyed.

171 **Drafting note: Existing § 55-217 is duplicated here and in Chapter XX [1] as § 55.1-**
172 **xxx because it applies to both residential and commercial tenancies. Technical changes are**
173 **made.**

174 § 55.1-xxx. Lessees, etc., to have same rights against grantees, etc., as against lessors.

175 A lessee or his personal representative or assigns may have against a grantee or alienee
176 of the reversion, or of any part of such reversion, or his heirs or assigns, the like benefit of any
177 condition, covenant, or promise in the lease as he could have had against the lessor himself and
178 his heirs and assigns, except the benefit of any warranty, in deed or law.

179 **Drafting note: Existing § 55-218 is duplicated here and in Chapter XX [1] as § 55.1-**
180 **xxx because it applies to both residential and commercial tenancies. Technical changes are**
181 **made.**

182 § 55.1-xxx. What powers to pass to grantee or devisee; when attornment unnecessary.

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

214 No covenant or promise by a lessee to pay the rent, or that he will keep or leave the
215 premises in good repair, shall have the effect, if the buildings on such premises are destroyed by
216 fire or otherwise, in whole or in part, without fault or negligence on his part, or if he is deprived
217 of the possession of the premises by the public enemy, of binding him to make such payment or
218 repair or erect such buildings again, unless there are other words showing it to be the intent of
219 the parties that he should be so bound. But in case of such destruction there shall be a reasonable
220 reduction of the rent for such time as may elapse until there are again upon the premises
221 buildings of as much value to the tenant for his purposes as what may have been so destroyed,
222 and, in case of such deprivation of possession, a like reduction until possession of the premises
223 is restored to him.

224 **Drafting note: Existing § 55-226 is duplicated here and in Chapter XX [3] as § 55.1-**
225 **xxx because it applies to both residential tenancies not governed by the VRLTA and**
226 **commercial tenancies. The archaic subjunctive verb form "be" is updated to "is" or "are"**
227 **to agree with singular or plural nouns, respectively. Technical changes are made.**

228 § 55.1-xxx. Security systems for commercial rental property.

229 No landlord of a premises ~~demised~~ used for commercial or business purposes shall
230 unreasonably withhold or delay consent for the tenant to install ~~anticrime warning devices or~~
231 security systems within ~~the demised~~ such premises.

232 **Drafting note: The term "anticrime warning devices" is deleted as redundant to**
233 **"security systems." Language updated for modern usage.**

234 Article 4.

235 Landlord Remedies.

236 **Drafting note: Proposed Article 4 duplicates sections from existing Chapter 13**
237 **relating to remedies available to landlords in commercial tenancy agreements.**

238 § 55.1-xxx. Effect of failure of tenant to vacate premises at expiration of term.

239 A tenant from year to year, month to month, or other definite term shall not, by his mere
240 failure to vacate the premises upon the expiration of the lease, be held as tenant for another term

241 when such failure is not due to his willfulness, negligence, or other avoidable cause, but such
242 tenant shall be liable to the lessor for use and occupation of the premises and also for any loss or
243 damage sustained by the lessor because of such failure to surrender possession at the time
244 stipulated.

245 **Drafting note: Existing § 55-223 is duplicated here and in Chapter XX [3] as § 55.1-**
246 **xxx because it applies to both residential tenancies not governed by the VRLTA and**
247 **commercial tenancies. Technical changes are made.**

248 § 55.1-xxx. When tenant deserts premises, how landlord may enter, etc.

249 If any tenant from whom rent is in arrear and unpaid deserts the rented premises and
250 leaves the same uncultivated or unoccupied, without goods thereon subject to distress sufficient
251 to satisfy the rent, the lessor or his agent may post a notice, in writing, upon a conspicuous part
252 of the premises requiring the tenant to pay the rent, in the case of a monthly tenant within 10
253 days, and in the case of a yearly tenant within one month from the date of such notice. If the
254 same is not paid within the time specified in the notice, the lessor shall be entitled to possession
255 of the premises and may enter thereon, and the right of such tenant thereto shall thenceforth be
256 at an end, but the landlord may recover the rent up to that time.

257 **Drafting note: Existing § 55-224 is duplicated here and in Chapter XX [3] as § 55.1-**
258 **xxx because it applies to both residential tenancies not governed by the VRLTA and**
259 **commercial tenancies. The archaic subjunctive verb form "be" is updated to "is" or "are"**
260 **to agree with singular or plural nouns, respectively. Technical changes are made.**

261 § 55.1-xxx. Failure to pay certain rents after five days' notice forfeits right of possession.

262 If any tenant or lessee of premises, being in default in the payment of rent, shall so
263 continue for five days after notice, in writing, requiring possession of the premises or the
264 payment of rent, such tenant or lessee shall thereby forfeit his right to the possession. In such
265 case the possession of the defendant may, at the option of the landlord or lessor, be deemed
266 unlawful.

267 **Drafting note: This proposed section is based on the first paragraph of existing §**
268 **55-225, which is relocated to Chapter XX [3] as § 55.1-xxx. The concept applies to both**
269 **residential tenancies not governed by the VRLTA and commercial tenancies.**

270 § 55.1-xxx. Authority of sheriffs to store and sell personal property removed from
271 premises; recovery of possession by owner; disposition or sale.

272 Notwithstanding the provisions of § 8.01-156, when personal property is removed from
273 any leased or rented commercial pursuant to an action of unlawful detainer, or pursuant to any
274 other action in which personal property is removed from the premises in order to restore such
275 premises to the person entitled thereto, the sheriff shall oversee the removal of such personal
276 property to be placed into the public way. The tenant shall have the right to remove his personal
277 property from the public way during the 24-hour period after eviction. Upon the expiration of
278 the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal
279 property remaining in the public way.

280 At the landlord's request, any personal property removed pursuant to this section shall be
281 placed into a storage area designated by the landlord, which may be the leased or rented
282 premises. The tenant shall have the right to remove his personal property from the landlord's
283 designated storage area at reasonable times during the 24 hours after eviction from the premises
284 or at such other reasonable times until the landlord has disposed of the property as provided in
285 this section. During that 24-hour period and until the landlord disposes of the remaining
286 personal property of the tenant, the landlord and the sheriff shall not have any liability for the
287 loss of such personal property. If the landlord fails to allow reasonable access to the tenant to
288 remove his personal property as provided in this section, the tenant shall have a right to
289 injunctive relief and such other relief as may be provided by law.

290 Any property remaining in the landlord's storage area upon the expiration of the 24-hour
291 period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If
292 the landlord receives any funds from any sale of such remaining property, the landlord shall pay
293 such funds to the account of the tenant and apply same to any amounts due the landlord by the

294 tenant, including the reasonable costs incurred by the landlord in the eviction process described
295 in this section or the reasonable costs incurred by the landlord in selling or storing such
296 property. If any funds are remaining after application, the remaining funds shall be treated as
297 security deposit under applicable law.

298 The notice posted by the sheriff setting the date and time of the eviction, pursuant to §
299 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and
300 shall include in the notice a copy of this statute attached to, or made a part of, this notice.

301 Nothing in this section shall affect the right of a landlord to enforce an inchoate or
302 perfected lien of the landlord on the personal property of a tenant of any leased or rented
303 commercial or residential premises, or of a landlord to distress, levy, and seize such personal
304 property as otherwise provided by law.

305 **Drafting note: Existing § 55-237.1 is duplicated here and in Chapter XX [3] as §**
306 **55.1-xxx because it applies to both residential tenancies not governed by the VRLTA and**
307 **commercial tenancies.**

308 § 55.1-xxx. Who may recover rent or possession.

309 Notwithstanding any rule of court to the contrary, (i) any person licensed under the
310 provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as
311 defined in § 55.1-xxx, or (iii) any employee, who is authorized in writing by a corporate officer
312 with the approval of the board of directors, or by a manager, a general partner, or a trustee, of a
313 partnership, association, corporation, limited liability company, limited partnership, professional
314 corporation, professional limited liability company, registered limited liability partnership,
315 registered limited liability limited partnership, business trust, or family trust to sign pleadings as
316 the agent of the business entity may obtain a judgment (a) for possession in the general district
317 court for the county or city wherein in which the premises, or part thereof, is situated or (b) for
318 rent or damages, including actual damages for breach of the rental agreement, in any general
319 district court where venue is proper under § 8.01-259, against any defendant if the person
320 seeking such judgment had a contractual agreement with the landlord to manage the premises

321 for which rent or possession is due and may prepare, execute, file, and have served on other
322 parties in any general district court a warrant in debt, suggestion for summons in garnishment,
323 garnishment summons, writ of possession, or writ of fieri facias arising out of a landlord tenant
324 relationship. However, the activities of any such person in court shall be limited by the
325 provisions of § 16.1-88.03.

326 **Drafting note: Existing § 55-246.1 is duplicated here and in Chapter XX [1] as §**
327 **55.1-xxx because it applies to both residential and commercial tenancies.**

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