

# 2021 New Laws

Like everything during the pandemic, the 2021 Virginia General Assembly Session was unusual. The Virginia REALTORS® government relations team reviewed every bill, including the thousands of amendments made to the bills as they worked their way through the system, and worked tirelessly to protect your business and the rights of property owners, all while maintaining social distancing and working with a virtual assembly session.

Below is a summary of the legislation that passed that will have an impact on how you do business. Each description starts with what the bill does and then contains information on what that law means.

If you want to read the full text of the legislation, the bill number provided is a hyperlink to the text of the bill as it is enacted into law. All laws are effective July 1, 2021 unless otherwise noted. Bills that were part of the Virginia REALTORS® Legislative Agenda are also noted.

## 1 Common Interest Communities

### 1.1 POA & Condo Act Electronic Meetings ([HB 1816](#) / [SB 1183](#)) (Virginia REALTORS®)

These bills amend the Property Owners' Association Act and the Virginia Condominium Act to allow the association's board of directors to meet virtually. Previously, the law required that at least two members of the board were present, in person, at the meeting place listed in the meeting notice. This became problematic with the pandemic, social distancing, and restrictions on the number of people who could gather. The new provisions in the law detail how to ensure that owners entitled to participate in meetings are allowed to do so, as well as methods related to voting and other matters.

### 1.2 Rulemaking Concerning Smoking ([HB 1842](#))

This bill allows associations to make rules regarding smoking in common areas and, for communities that contain attached units, in the attached units. The law does say that the underlying governing documents can prohibit the board from making such rules, but unless they specifically prohibit such a rule, the board of directors may adopt reasonable rules. This means that in a condo or townhouse community, where there are attached units, a board of directors could limit or outright prohibit smoking within the owner's private property. Buyers should carefully review the association's bylaws and rules to see if there are such limitations in a development if this is a concern for them.

## 2 Fair Housing

### 2.1 Accessible Parking as Accommodation ([HB 1971](#))

This bill clarifies that a request for accessible parking should be treated as a reasonable accommodation, rather than a reasonable modification. The key difference between a reasonable accommodation and a reasonable modification is who is responsible for paying for the changes and what the standard is for granting the request. A request for a reasonable accommodation must be granted so long as it does not impose either an undue financial and administrative burden or fundamentally alter the nature of the operations of the person receiving the request. This means that if you are approached by an individual with a disability who requests accessible parking to accommodate their disability, you must either grant it, or, if it creates an undue financial burden or fundamentally alters the services you are providing, you must engage in the interactive process.

### 2.2 Discrimination by Localities ([HB 2046](#))

This bill makes it an unlawful discriminatory housing practice for any jurisdiction (county, city, or town) to discriminate in how land use ordinances or guidelines are applied or housing developments are permitted on the basis of a protected class, because the housing development will, or is expected to, contain affordable housing, or by restricting sales or rentals. The prohibition on restrictions related to rental units does not apply to ordinances related to short-term rentals.

### 2.3 Military Status ([HB 2161](#) / [SB 1410](#))

These bills update the 2020 addition of “status as a veteran” to “military status” in fair housing and employment law. There is no change in what is prohibited under Virginia’s Fair Housing law, simply a change in the protected class and a definition for that class.

“Military status” is defined as “(i) a member of the uniformed forces, as defined in [10 USC § 101\(a\)\(5\)](#), of the United States or a reserve component thereof named under [10 USC § 10101](#), (ii) a veteran as defined in [38 USC § 101\(2\)](#), or (iii) a dependent as defined in [50 USC § 3911\(4\)](#) except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that if proven true would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 USC Chapter 50.” Essentially, this group encompasses active duty, reserve, and servicemembers who were not dishonorably discharged from: Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service. It also covers the spouse, child, or any other individual for whom the servicemember provides more than 50% of the individual’s support.

### 3 Insurance

#### 3.1 Association Health Plans ([SB 1341](#)) (Virginia REALTORS®)

This bill was another step in Virginia REALTORS® being able to offer an association health plan by allowing associations to work with insurance providers in Virginia and establish health insurance plans that they can offer to members of their associations. While this legislation did not pass as we wanted, our efforts are not done yet. Virginia REALTORS® continues to support and monitor all options that could provide our members with access to affordable healthcare.

### 4 Property Management

#### 4.1 Extended Notice & Payment Plan due to COVID-19 ([HB 1889](#))

This bill simply extends the sunset date of July 1, 2020 to July 1, 2021 for a bill passed in the 2020 Special Session that became effective November 9, 2020. During the 2020 Special Session, [HB 5064](#) added two provisions to the VRLTA related to noncompliance with the rental agreement. First, all landlords must give 14 days notice of late rent payment, rather than 5. Second, landlords with five or more properties subject to a lease in Virginia must offer a payment plan to any tenant who is late on rent. For more details about this bill and current requirements, [check out this blog post from November 2020](#).

#### 4.2 Tenant Remedies for Exclusion from Unit ([HB 1900](#) / [SB 1215](#))

These bills change the language found in the VRLTA related to a tenant's remedies for exclusion from the dwelling unit, interruption of services, or actions taken to make the premises unsafe. Previously, the law said that if a landlord unlawfully removed or excluded a tenant or willfully diminished services, the tenant may obtain an order to recover possession or require the landlord to resume interrupted essential services. The new provisions are worded much stronger in favor of the tenant, saying that a general district court must enter an order upon petition by a tenant who presents evidence establishing that the landlord has willfully and without authority from the court, excluded the tenant, interrupted essential services or taken action to make the premises unsafe. The initial hearing on the matter must be held within 5 calendar days and extends the timeframe for the full hearing to 10 days after the initial hearing if an ex parte order is issued at the initial hearing.

#### 4.3 Access ([HB 1981](#))

This bill adds language to the section of the VRLTA addressing access to the unit to show the unit for rent or sale. Under the new language, the term "reasonable justification" is defined to include "the tenant's reasonable concern for his own health, or the health of any authorized occupant, during a state of emergency declared by the Governor... in response to a communicable disease of public health threat." In order to prevent the landlord or property manager from accessing the property during a public health emergency under this section, the tenant must provide the landlord written notice informing the landlord of the concern and

provide the landlord or managing agent a video tour of the unit or other acceptable substitute for exhibiting the unit for sale or lease.

The bill also updates the law to require the landlord to give the tenant at least 72 hours, rather than 24, notice of routine maintenance that has not been requested by the tenant.

Further, during a public health emergency due to a communicable disease, the tenant may provide notice to the landlord requesting that one or more nonemergency repairs be made during the state of emergency. If the tenant gives the landlord this notice, the tenant waives all claims or rights against the landlord for failure to address nonemergency conditions. After the initial notice, the tenant may consent, in writing, to the landlord resuming nonemergency repairs. Even if the tenant has given the notice, the landlord may still enter the property to do repairs not more than once every six months, if the tenant is given at least seven days' written notice, the tenant agrees to the time, and the people entering the property wear appropriate and reasonable personal protective equipment required by state law. If the landlord is required to conduct maintenance of an inspection for the loan or an insurance policy that covers the dwelling unit, the tenant must allow such maintenance or inspection, so long as all people entering the unit wear appropriate personal protective equipment as required by state law.

This means that in the event of a pandemic, similar to COVID-19, tenants can provide written notice requesting that the landlord or property manager not conduct routine maintenance. Even if the tenant gives that notice, the landlord has the right to enter the property once every six months to conduct routine maintenance, but must give the tenant at least seven days' notice. The tenant has to agree to the time, and those who enter the property must wear appropriate equipment, such as masks.

#### 4.4 Rent with Reservation & Right of Redemption ([HB 2014](#))

This bill updates the VRLTA to prohibit a landlord from obtaining an order of possession if the tenant has fully paid the late rent, damages, money judgements, award of attorney fees, and court costs, unless there is another non-monetary reason for obtaining possession. If the tenant makes a partial payment, the landlord can proceed to obtain an order of possession so long as the tenant has received a rent with reservation notice.

The law now spells out specific language that must be included in the rent with reservation notice: "Any partial payment of rent made before or after a judgment of possession is ordered will not prevent your landlord from taking action to evict you. However, full payment of all amounts you owe the landlord, including all rent as contracted for in the rental agreement that is owed to the landlord as of the date payment is made, as well as any damages, money judgment, award of attorney fees, and court costs made at least 48 hours before the scheduled eviction will cause the eviction to be canceled, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord." A copy of this notice must be provided to the court for service to the tenant along with the summons for unlawful detainer.

The VRLTA also now allows landlords who own, or have up to a 10% ownership interest in, four or fewer units to limit a tenant's use of the right of redemption to no more than once per lease period if the landlord provides written notice of the limitation to the tenant. For landlords with five or more rental units, there is no restriction on the number of times a tenant uses the right of redemption now.

The time period for the tenant to exercise the right of redemption has been shortened from two business days to 48 hours before the date and time scheduled by the officer to whom the writ of eviction has been delivered to be executed. Once the payment is made, the landlord or property manager must promptly notify the officer who has the writ of eviction that the writ of eviction should be canceled. It is a violation of the VRLTA if the landlord has actual knowledge of the payment and willfully fails to provide the notification. In addition to notifying the officer, the landlord must also notify the court of the satisfaction of the money judgement.

Finally, when the tenant requests in writing, the landlord or property manager must provide the tenant a written statement of all amounts owed by the tenant to the landlord so that the tenant can exercise their right of redemption.

#### 4.5 Foreclosures ([HB 2229](#)) (Virginia REALTORS®)

This bill updates the provisions of the law regarding a foreclosure to conform with federal foreclosure law. In the event that a single-family unit is foreclosed upon with a tenant in the property, and the new owner plans to occupy the property as their primary residence, the buyer must give written notice to the tenant that the lease is terminated, and the tenant must vacate by a specific date that is at least 90 days after the notice. If the new owner does not plan to occupy the unit as their primary residence, they must honor the lease agreement that is in place and the tenant is allowed to remain for the rest of the lease; however, the new owner is allowed to terminate the lease for non-compliance or any other reason allowed under the lease.

This bill removes the section of the VRLTA that terminated the lease upon the foreclosure sale and converted it to a month-to-month lease.

#### 4.6 Security Deposits ([HB 2249](#))

This bill adds definitions of damage insurance and renter's insurance to the VRLTA. It also contains technical updates if the tenant opts to use damage insurance, rather than pay the full security deposit.

## 5 Residential Property Disclosure Act

### 5.1 Repetitive Flood Loss ([HB 2320](#) / [SB 1389](#)) (Virginia REALTORS®) (Effective 1/1/22)

This bill adds a new affirmative disclosure to the RPDA. Now, an owner who has actual knowledge that the house is a repetitive risk loss structure must disclose that to the buyer.

“Repetitive risk loss” is defined as “two or more claims of more than \$1,000 were paid by the National Flood Insurance Program within any rolling 10-year period since 1978.” A disclosure form will be added to the other affirmative disclosure forms on the DPOR website.

## 5.2 New disclosures

The new additions to the Virginia Residential Property Disclosure Act Statement are:

1. Mold ([HB 1824](#))
2. Flood Risk Report ([HB 2320](#) / [SB 1389](#) (Virginia REALTORS®) (Effective 1/1/22))

A new Flood Risk Information Form will be placed on the DPOR website and is referenced in the RPDA Disclosure Form.

## 6 Employment

### 6.1 Disability Discrimination ([HB 1848](#))

This bill adds discrimination on the basis of disability as an unlawful practice under the Virginia Human Rights Act. It also requires employers to make reasonable accommodations to the known physical and mental impairments of an otherwise qualified person with a disability.

## 7 Miscellaneous

### 7.1 Foreclosures & Manufactured Home Parks ([HB 2175](#) / [SB 1327](#)) (One provision, noted below, is effective 10/1/21)

These bills provide various protections for homeowners and tenants of manufactured home parks. These protections include:

1. Restricting the circumstances under which a court may order a person’s primary residence to be sold to enforce a judgment lien. Now, the judgement will have to exceed \$25,000 for a lien to be enforced and cause the sale of real estate if the property is the debtor’s primary residence. This is increased from twenty dollars.
2. Requiring the Department of Housing and Community Development to create a statement of tenant rights and responsibilities explaining in plain language the rights and responsibilities of tenants under the Virginia Manufactured Home Lot Rental Act.
3. In the case of a deed of trust conveying owner-occupied residential real estate, the trustee cannot sell the property in a foreclosure sale without receiving an affidavit signed by the party that provided the notice of the sale to the owner confirming that notice was sent to the owner. Additionally, a copy of the notice must be attached to the affidavit. This provision has an effective date of October 1, 2021.
4. In the case of a deed of trust conveying owner-occupied residential real estate, the notice period for a foreclosure sale is increased from 14 days to 60 days, and the notice of the foreclosure must include information regarding housing counseling.

5. Landlords of manufactured home parks must provide tenants a copy of any written rental agreement and the statement of tenant rights and responsibilities to the tenant within one month of the effective date of the written rental agreement. Failure to provide the rental agreement and statement will not invalidate the lease; however, a landlord cannot file or maintain an action against the tenant in court for an alleged lease violation until they have provided the tenant with the statement of tenants' rights and responsibilities.

#### 7.2 Liens at Settlement ([HB 2099](#)) (Effective 1/1/22)

This bill reduces the time within which an action can be taken on a judgement lien from 20 years to 10 years. The timeframe may be extended up to two times by recording a certificate in the clerk's office before the expiration of the current period. It further allows settlement agents to release a judgment lien, provided that the obligations secured by the judgement lien have been satisfied by payment made by the settlement agent, even if the settlement agent is named as a trustee under the lien.