

2015 New Laws Broker Guide

New Laws Overview

With one exception, noted below, all new laws covered in this WorkSmart go into effect July 1, 2015. This is an overview of the new laws impacting REALTORS[®], but does not necessarily cover every law that could affect your agents.

The overview of the new laws below are broken into three categories: license law, real estate law generally, and property management law.

License Laws

- Enticing a person to enter a house to commit a crime is a separate and distinct Class 6 felony. This means that if an individual entices a real estate salesperson into a house in order to harm them, an additional charge can be brought against the person.
- Virginia Code § 54.1-2105.03. Continuing education; relicensure of brokers and salespersons.

CE will now include information on flood hazard areas and the National Flood Insurance Program.

**Effective January 1, 2016

Real Estate Laws Generally

- Mechanics liens - subcontractors may not waive their lien rights in advance of performing work.
- Recordation tax - when a supplemental deed or mortgage is recorded, the recordation tax can only be charged on the new or additional amount. This means that the new recordation tax cannot be based on the total amount of the loan, it must be based on the difference from the previous recordation.
- Onsite sewage system waivers - homeowners who meet certain criteria can request, and will receive, a voluntary upgrade waiver if they:
 - Have a waiver to repair a failing onsite system between 7/1/2004 and 12/6/2011;
 - Completed the repair; and
 - Voluntarily upgraded the system

- Residential Property Disclosure Act - The RPDA has been updated to include information regarding flood hazard areas. Due to the concern of several members of the General Assembly about flooding in different areas of the Commonwealth, this issue will now be part of licensee CE and has been added to the RPDA. The new item for the RPDA says the owner makes no representation with respect to whether the property is located in one or more special flood hazard areas and purchaser should exercise due diligence including:
 - Obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas;
 - Review of any map depicting special flood hazard areas; and
 - Whether flood insurance is required.
- Residential Property Disclosure Act - The RPDA already included stormwater detention facilities on the property. It has now been updated to cover any maintenance agreements related to any such facilities.

Property Management Laws

There were a number of changes both to the Virginia Residential Landlord Tenant Act (VRLTA) and to the landlord tenant laws. Below is a summary of some of the changes.

- Retaliatory conduct - the VRLTA has been updated so that retaliation no longer has to be the primary reason a landlord takes an adverse action against the tenant. Language identical to the new VRLTA provision has been added to the general landlord tenant provisions so that retaliation is prohibited by all landlords, not just those subject to the VRLTA.
- Unlawful detainer - the statute has been updated to make it clear that if the defendant (tenant) fails to appear at a court hearing on unlawful detainer, the plaintiff (landlord) may submit evidence by either affidavit or testimony of outstanding rent and other damages. If the lease requires rent to be due for the entire month, in advance, on the first of the month, the amount due at the hearing will be for the entire month, if requested. This means that if the lease requires the entire month's rent to be paid on the first of the month, the tenant fails to pay, and the landlord (or agent) files an unlawful detainer action, the landlord (or agent) can provide an affidavit

or testimony at the hearing regarding the amount of rent due. If the hearing takes place on the 15th of the month, the landlord can request the entire month's rent, not just the prorated amount as of the date of the hearing.

- Change of use - under landlord tenant law, parties cannot waive the right to 120 days' notice when the lease is being terminated due to a change of use. If the lease is a month-to-month lease, notice has to be given 30 days prior to the next rent due date.
- Under landlord tenant law, family trust has been added to the list of entities able to recover rent and possession in court. This means that property managers, acting on behalf of a family trust, will be able to file in court to recover rent and/or possession. Previously, judges were prohibiting property managers acting on behalf of a family trust from filing in court because family trusts were not included on the list of who may recover rent or possession.
- VRLTA Updates
 - Mold - when there is visible evidence of mold, the landlord shall promptly remediate and reinspect the property to confirm there is no longer visible evidence of mold. In addition, the landlord must make available to the tenant copies of written information regarding the remediation.
 - Identification - the landlord may photocopy a photo id, unless it would be a violation of U.S. Code Title 18. This is intended to clarify that certain ids (military) may not be photocopied.
 - Prepaid rent - the VRLTA has been updated to clarify that the landlord and tenant may agree to prepaid rent in the lease. Previously, the law stated that the tenant could offer and the landlord could accept prepaid rent.
 - Confidential information - confidential information can be released from the landlord to the managing agent or a subsequent managing agent. Both the landlord and the managing agent can contract with a third party to store the confidential information.
 - Security deposits - if the tenant(s) have not provided a forwarding address for any security deposit owed to them, after the 1 year and 45 days, the landlord shall escheat the money to Virginia within a reasonable time. The statute goes on to define "reasonable time" as no more than 90 days.

- Non-emergency situation - in the event that the landlord needs to remove the tenant from the dwelling unit for a non-emergency situation, both parties may agree to less than 30 days' notice.
- Fire or casualty damage - if there is fire or casualty damage to the extent that the tenant needs to vacate in order to repair, the landlord may now give 14 days' notice terminating the lease. This is down from 30 days previously.

Questions and Answers

If the landlord or agent does not have a forwarding address, when must they send any remaining security deposit to the state?

After waiting the required 1 year from the initial 45 days, the security deposit must escheat to Virginia within a reasonable time. Reasonable time has been defined as 90 days.

In what circumstances may a landlord ask for the full month's rent in an unlawful detainer action?

If the lease requires rent to be paid for the entire month on the first of the month, the landlord may ask for the entire month's rent.

What does the seller now suggest the purchaser exercise due diligence regarding under the Residential Property Disclosure Act?

The owner makes no representation with respect to whether the property is located in one or more special flood hazard areas and purchaser should exercise due diligence including:

- a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas;
- Review of any map depicting special flood hazard areas; and
- Whether flood insurance is required.

The RPDA has also been updated to include any maintenance agreement for such facilities and the purchaser should exercise due diligence to determine their presence.