



**2024 VBBA ANNUAL BENCH
BAR CONFERENCE &
LEGISLATIVE UPDATE**

~

AUGUST 15, 2024

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VIRGINIA BEACH CONVENTION CENTER

12p-5p

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****Reception to follow at Tempt**



2024 Annual Bench~Bar Conference

AGENDA

- I. **CHECK-IN: 11:30AM** Please be sure to check-in to ensure CLE credit.

- II. **LEGISLATIVE UPDATE
12P-1:30P** A panel of your colleagues and our local delegation present a summary of this year's legislative session and the new laws that took effect 7/1/24

- III. **BREAK
1:30-1:45P** Enjoy coffee, assorted beverages, and snacks in the lobby

- IV. **GDC
1:45P-2:45P** Your General District Court Presents: Landlord ~Tenant 2024

- IV. **CIRCUIT COURT
2:45P-3:45P** Your Circuit Court (with help from our Court of Appeals) presents: Preserving Error and General Tips for the Practitioner before the Virginia Court of Appeals PLUS- E-Filing Updates!!

- V. **BREAK
3:45P-4PM** Enjoy coffee, assorted beverages, and snacks in the lobby

- VI. **JDR
4P-5P** Your JDR Court presents: Practice Pointers and Legal Refreshers for civil practitioners before the court in custody, visitation, and support cases PLUS a courtroom by courtroom look at tips and guidance for case management and presentation

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Virginia MCLE Board

Certification of Attendance (Form 2)

Report attendance online at www.vsb.org. Keep this form for your records.

Name: _____ VSB ID#: _____
Address: _____ Phone: _____

Email: _____

City State Zip

Course ID: VILL004
Sponsor: Virginia Beach Bar Association
Title: VBBA 2024 Annual Bench Bar Conference and Legislative Update
Type: Live
Format: Speaker in Room
Credits: 4.50 0.00 0.00
CLE (Ethics) Well-being

Credit Certification

Date completed: _____ Location: _____
Do not leave blank or form will not be processed.

By my signature below I certify:

1. I attended a total of _____ (hrs/mins) of approved CLE of which (_____) (hrs/mins) were approved Ethics and _____ (hrs/mins) were approved Well-being. (Claim credit for actual time in attendance. Round to the nearest half hour. E.g. 75 min=1.5 CLE hours.)
2. The sessions for which I am claiming credit had written instructional materials to cover the subject matter.
3. I participated in this program in a setting physically suitable for the course.
4. I was given the opportunity to interact with the presenter (in real time if the program was live or by some other means if the program was pre-recorded).
5. I understand I may not claim credit for any course/segment for which credit has already been claimed in the current or preceding CLE periods.
6. I understand that a materially false statement shall be subject to appropriate disciplinary action.

Date

Signature

MCLE requirement: Paragraph 17, Section IV, Part Six of the Rules of the Supreme Court of Virginia and MCLE Board Regulations.
Completion deadline: October 31. Reporting deadline: December 15. Fees are assessed for failure to comply with MCLE deadlines.

Virginia MCLE Board | Virginia State Bar | 1111 East Main Street, Suite 700 | Richmond, VA 23219-0026
(804) 775-0577 | MCLE@vsb.org



2024 Annual Bench ~ Bar Conference: Legislative Update

****Materials Graciously Provided by VTLA and
Your VBBA Board**

Panelists:

Del. Don Scott, Speaker of the House

Del. Anne Ferrell Tata

Sen. Aaron Rouse

Jeff Breit, Esq.

Mario Lorello, Esq.

Moderator: Ed Booth, Esq.

**Add'l Materials / Circuit Court Updates provided by:
Amy Jones, Esq. – VBCC Staff Attorney**

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Failed Legislation of Note

In Virginia, can we ever have a true "Bar" ? Not anytime soon. SB 168 (Sen. Reeves) Failed.

In Virginia, if a restaurant sells mixed beverages that contain liquor, the restaurant must generate at least 45% of its revenue from food and non-alcoholic beverages. That said- many "nightclub" / "pub" type businesses cannot meet this ratio because generally people do not go to such places for regular dining. This bill would have eliminated the ratio for restaurants generating more than \$10,000 per year in food and non-alcoholic beverages sales. The bill passed the Senate and House General Laws but was ultimately sent back to House General Laws from the House floor where it failed to advance.

No arena for Nova. SB 718 (Sen. Surovell) / HB 1514 (Del. Torian). Failed. The bill would have created a stadium authority and financing mechanism to build the arena for the Capitals and Wizards. Bond sales would have paid for the construction of the arena and the amounts would have been paid back through certain taxable revenue from sales generated at the venue. The bill failed.

Virginia and EV cars? SB 3 (Sen. Stuart) / SB 53 (McDougle) / SB 160 (McGuire) / HB 3 (Del. Wilt) / HB 7 (Del. Fowler). Failed.

In a previous legislative session, a law was passed to copy California's strict automobile emissions standards. Many bills were introduced this year that *would* have repealed this rule in Virginia, but all failed. Thus, the previous legislation is still on the books.

Mandated Health Insurance Coverage for Diabetes Care. HB 610 (Del. Price) Failed.

This bill would have required commercial insurance coverage for all FDA-approved insulin, continuous blood glucose monitoring, regular foot care and eye care exams, and prohibited insurers from imposing cost-sharing requirements for diabetes care and supplies. The bill was referred to the Health Insurance Reform Commission who is now required to analyze and report to the legislature on whether the bill- as written-would increase the cost of commercial insurance.

Medical Aid in Dying SB 280 (Sen. Hashmi) / HB 858 (Del. Hope) Failed.

This bill would have authorized any adult diagnosed with a terminal condition to request an attending health care provider to prescribe a self-administered controlled substance for the purpose of ending one's life. The bill required the patient to orally ask *on two occasions*, as well as in writing, for the assistance in dying. The written request was required to be signed by the patient and one witness. The bill failed.

Data Centers (too many to list/all deferred).

Virginia plays hosts to many "data centers" and they are a hot topic, or so seems as implied by the number of bills introduced this session. What are *data centers*? A data center is a physical facility that organizations use to house their critical applications and data. Virginia is known for its reliable power supply, robust network infrastructure, and favorable business environment- making it an attractive host to business operating data centers. That said- most of the bills introduced this past session *were efforts to reduce tax incentives* for data centers, impose new parameters or prohibitions on the siting of data centers, impose noise abatement requirements, and impose new requirements regarding energy use. All were deferred and JLARC was requested to conduct a study on data centers, their impact on Virginia, and a host of related topics.

2024 Bills of Interest

Executive Legislative Summary

**2024 Session
of the
General Assembly of Virginia**



**VIRGINIA TRIAL LAWYERS ASSOCIATION
2024 BILLS OF INTEREST**

Executive Legislative Summary

Bill	Sponsors	Title	Last Action	Latest Version
<u>HB 8</u>	<u>R. Lee Ware</u>	Medical Ethics Defense Act established. Establishes the right of a medical practitioner, health care institution, or health care payer not to participate in or pay for any medical procedure or service that violates such medical practitioner's, health care institution's, or health care payer's conscience, as those terms and conditions are defined in the bill. The bill provides protections for medical practitioners who disclose violations of the bill or report violations of laws or ethical guidelines for the safe provision of any medical procedure or service. The bill also provides a private right of action for any party harmed by violations of the bill.	House, Feb 13, 2024: Left in Health and Human Services	House: Prefiled and ordered printed; offered 01/10/24 24100711D
<u>HB 68</u>	<u>David L. Bulova</u>	Workers' compensation; post-traumatic stress disorder incurred by dispatchers. Allows dispatchers, as defined in the bill, to claim workers' compensation benefits relating to post-traumatic stress disorder under the Virginia Workers' Compensation Act. Currently, only law-enforcement officers and firefighters may claim such benefits. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102624D: 65.2-107	House, Feb 6, 2024: Continued to 2025 in Labor and Commerce by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24102624D
<u>HB 110</u>	<u>Richard C. "Rip" Sullivan, Jr.</u>	Surrogacy brokers; repeal of prohibition against. Repeals the statute prohibiting any person, firm, corporation, partnership, or other entity from accepting compensation for recruiting or procuring surrogates or accepting compensation for otherwise arranging or inducing an intended parent and surrogate to enter into surrogacy contracts. Under current law, any violation of such prohibition is a Class 1 misdemeanor. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24101052D: 20-159, 20-162, 20-165 House: Bill text as passed House and Senate (HB110ER): 20-159, 20-162, 20-165	House, Apr 17, 2024: House sustained Governor's veto	House: Bill text as passed House and Senate (HB110ER)
<u>HB 140</u>	<u>David A. Reid</u>	Adoption; award of damages; death by wrongful act. Provides that, in a case for death by wrongful act, the child of a decedent who has been adopted after the death of such decedent shall be included in the class of beneficiaries entitled to an award of damages resulting from such case, provided that a court had not previously terminated the parental rights of such decedent. This bill is identical to SB 209. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24100045D: 8.01-53, 63.2-1215 House: Printed as engrossed 24100045D-E: 8.01-53, 63.2-1215 House: Bill text as passed House and Senate (HB140ER): 8.01-53, 63.2-1215 Governor: Acts of Assembly Chapter text (CHAP0069): 8.01-53, 63.2-1215	executive, Mar 14, 2024: Approved by Governor-Chapter 69 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0069)
<u>HB 182</u>	<u>Patrick A. Hope</u>	Breach of a contract; attorney fees; factors. Provides that, for any contract entered into on or after July 1, 2024, if such contract contains a provision allowing the award of attorney fees to a party when the other party to such contract breaches such contract, the court may also allow reasonable attorney fees to be awarded to the party that prevails in any action, whether as plaintiff or defendant, with respect to such contract. The bill requires the court to take	House, Jan 15, 2024: Stricken from docket by Courts of Justice (22-Y 0-N)	House: Prefiled and ordered printed; offered 01/10/24 24104413D

Bill	Sponsors	Title	Last Action	Latest Version
		into account certain factors in determining such reasonable attorney fees.		
<u>HB 194</u>	<u>Marty Martinez</u>	Virginia Military Parents Equal Protection Act; Space Force; deployment. Adds members of the Space Force to the list of service members included in the definition of deploying parent or guardian for the purposes of the Virginia Military Parents Equal Protection Act. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102450D: 20-108, 20-124.7 House: Bill text as passed House and Senate (HB194ER): 20-108, 20-124.7 Governor: Acts of Assembly Chapter text (CHAP0022): 20-108, 20-124.7	executive, Mar 8, 2024: Approved by Governor-Chapter 22 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0022)
<u>HB 272</u>	<u>David A. Reid</u>	Attorney fees; judgments, compensation, or monetary awards related to veterans. Prohibits an attorney from charging, demanding, receiving, or collecting for services rendered fees in excess of 10 percent of any judgment, compensation, or monetary award granted to a veteran or the family member of a veteran, or the legal representative of such individual, related to the veteran's service in the Armed Forces of the United States or the Virginia National Guard, including any judgment, compensation, or monetary award granted pursuant to the Camp Lejeune Justice Act of 2022. The bill provides that an attorney who violates such prohibition shall be fined not more than \$5,000 and may be subject to disciplinary action by the Virginia State Bar.	House, Jan 19, 2024: Stricken from docket by Courts of Justice (22-Y 0-N)	House: Prefiled and ordered printed; offered 01/10/24 24100380D
<u>HB 274</u>	<u>Dan I. Helmer</u>	Workers' compensation; presumption of compensability of infertility for firefighters. Provides that firefighters who suffer from infertility are presumed to have developed infertility during the course and scope of employment as a firefighter in certain instances. The bill provides that such infertility is compensable under the Virginia Workers' Compensation Act if diagnosed by a medical professional and that such compensation may include medical treatment, temporary total incapacity benefits, and temporary partial incapacity benefits for a maximum period of 52 weeks from the date of diagnosis. The bill also requires each employer of firefighters to refer a firefighter seeking infertility health care services to a licensed medical professional after January 1, 2025.	House, Feb 5, 2024: Continued to 2025 in Appropriations by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24100930D
<u>HB 315</u>	<u>Marcus B. Simon</u>	Department of Medical Assistance Services; lien for claim of personal injuries. Creates a process by which a lien in favor of the Department of Medical Assistance Services on a claim for personal injuries may be satisfied upon the request of the injured person who received medical care or services to treat such personal injury. The bill provides that the Department is required within 60 days of receipt of the request of the injured person to provide such injured person or his personal representative with an itemized statement detailing all health care expenses paid for by a program of the Department and a sum specific demand for payment in full and final resolution of the Department's lien. Such request shall not be made by the injured person or his personal representative until all claims for health care expenses to be paid for by a program of the Department for an alleged injury on which the claim is based have been submitted to and processed for potential payment by the Department. The bill provides that if the Department fails to respond to such request, the injured party or his personal representative may submit to the Department an offer of payment for a sum certain in satisfaction of the lien, including an explanation of the reasons for such offer, and the Department may then, within	House, Apr 17, 2024: Enacted, Chapter 807 (effective 1/1/25)	Governor: Acts of Assembly Chapter text (CHAP0807)

Bill	Sponsors	Title	Last Action	Latest Version
		30 days, accept or reject such offer. The bill also clarifies that such process is not the exclusive means by which an Injured person or his personal representative may request such itemiz...		
<u>HB 373</u>	<u>Michael B. Feagans</u>	Financial institutions; reporting financial exploitation of elderly or vulnerable adults. Permits a financial institution, as defined in the bill, to allow an elderly or vulnerable adult, as defined in the bill, to submit and periodically update a list of trusted persons whom such financial institution or financial institution staff, as defined in the bill, may contact in the case of suspected financial exploitation of such adult. In such a case, the bill also allows a financial institution or financial institution staff to convey such suspicion to one or more certain individuals, provided that the recipient of such conveyance is not the suspected perpetrator of financial exploitation. The bill provides that a financial institution or financial institution staff shall be immune from any criminal, civil, or administrative liability for any act taken or omission made in accordance with the bill's provisions.	House, Feb 1, 2024: Continued to 2025 in Labor and Commerce by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24101336D
<u>HB 418</u>	<u>Marcus B. Simon</u>	Civil actions filed on behalf of multiple persons; class actions. Provides that one or more members of a class may, as representative parties on behalf of all members, bring a civil action or may be proceeded against in a civil action, provided that (i) the class is so numerous that joinder of all members or proceeding with such actions on an individual basis is impracticable or contrary to judicial economy; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (iv) the representative parties shall fairly and adequately protect the interests of the class. The bill further sets out the procedure to certify a class action, the duties of counsel appointed in a class action, the various orders a court may issue during the course of a class action, and the process by which a settlement, voluntary dismissal, or compromise may occur. The bill has a delayed effective date of January 1, 2025, and is identical to SB 259. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24104551D: 8.01-267.1	House, Apr 17, 2024: House sustained Governor's veto	House: Bill text as passed House and Senate (HB418ER)
<u>HB 452</u>	<u>Katrina Callisen</u>	First offense drug program; previous misdemeanor marijuana conviction. Allows any person to participate in the first offender drug program even if such person was previously convicted of an offense related to misdemeanor possession of marijuana or who has had a previous dismissal of a misdemeanor offense for possession of marijuana pursuant to the program. Current law prohibits any person with a previous marijuana conviction from participating in the program. This bill is identical to SB 362. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102898D: 18.2-251 House: Printed as engrossed 24102898D-E: 18.2-251 Senate: Committee substitute printed 24108045D-S1: 18.2-251 House: Bill text as passed House and Senate (HB452ER): 18.2-251 House: Governor's substitute printed 24109197D-H1: 18.2-251 House: Reenrolled bill text (HB452ER2): 18.2-251 Governor: Acts of Assembly Chapter text (CHAP0811): 18.2-251	House, Apr 17, 2024: Enacted, Chapter 811 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0811)
<u>HB 455</u>	<u>Katrina Callisen</u>	Possession of an item containing residue of a controlled substance; penalty. Creates a Class 1 misdemeanor for the offense of possession of an item containing residue of a controlled substance. The bill provides that upon motion of the attorney for the	House, Apr 17, 2024: House sustained Governor's veto	House: Bill text as passed House and Senate (HB455ER)

Bill	Sponsors	Title	Last Action	Latest Version
		Commonwealth, a charge for possession of a controlled substance classified in Schedule I or II of the Drug Control Act may be reduced to unlawful possession of an item containing residue of a controlled substance. Currently, possession of any amount of such controlled substance is a Class 5 felony. As introduced, this bill was a recommendation of the Virginia Criminal Justice Conference.		
HB 531	Paul E. Krizek	Workers' compensation; injuries caused by repetitive and sustained physical stressors. Provides that, for the purposes of the Virginia Workers' Compensation Act, "occupational disease" includes injuries or diseases from conditions resulting from repetitive and sustained physical stressors, including repetitive and sustained motions, exertions, posture stresses, contact stresses, vibrations, or noises. The bill provides that such injuries or diseases are covered under the Act and that such coverage does not require that such repetitive or sustained physical stress occurred over a particular time period, provided that the time period over which such physical stress occurred can be reasonably identified. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24100455D: 65.2-400	House, Feb 5, 2024: Continued to 2025 in Appropriations by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24100455D
HB 736	Briana D. Sewell	Department of Law; compensation for veterans' benefits matters; work group; report. Directs the Department of Law's Division of Consumer Counsel to convene a work group to examine and make recommendations regarding the practice of persons receiving compensation for preparing, presenting, prosecuting, advising, consulting, or assisting any individual regarding any veterans' benefits matter, as defined in the bill. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24104975D: 59.1-200 House: Committee substitute printed 24106152D-H1: 59.1-200	executive, Apr 8, 2024: Approved by Governor-Chapter 730 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0730)
HB 738	Briana D. Sewell	Space Force; extension of certain benefits and privileges for persons serving in a branch of the Armed Forces. Amends several provisions of law related to certain benefits and privileges available to persons serving or having served in a branch of the Armed Forces to include the Space Force as an eligible branch. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24101018D: 8.01-337, 20-108, 20-124.7, 22.1-287.04, 23.1-508.1, 24.2-452, 44-93.1, 54.1-3601, 55.1-615 House: Bill text as passed House and Senate (HB738ER): 8.01-337, 20-108, 20-124.7, 22.1-287.04, 23.1-508.1, 24.2-452, 44-93.1, 54.1-3601, 55.1-615 House: Governor's substitute printed 24108766D-H1: 2.2-2001.4, 8.01-337, 20-108, 20-124.7, 22.1-287.04, 23.1-508.1, 24.2-452, 44-93.1, 54.1-2701, 54.1-2901, 54.1-3601, 55.1-615 House: Reenrolled bill text (HB738ER2): 2.2-2001.4, 8.01-337, 20-108, 20-124.7, 22.1-287.04, 23.1-508.1, 24.2-452, 44-93.1, 54.1-2701, 54.1-2901, 54.1-3601, 55.1-615 Governor: Acts of Assembly Chapter text (CHAP0817): 2.2-2001.4, 8.01-337, 20-108, 20-124.7, 22.1-287.04, 23.1-508.1, 24.2-452, 44-93.1, 54.1-2701, 54.1-2901, 54.1-3601, 55.1-615 Governor: Acts of Assembly Chapter text (CHAP0090): 20-166, 20-167, 63.2-1201.1, 63.2-1230	House, Apr 17, 2024: Enacted, Chapter 817 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0817)
HB 769	Karrie K. Delaney	Multi-jurisdiction grand jury; elder abuse crimes. Adds the following to the list of crimes that a multi-jurisdiction grand jury may investigate: (i) financial exploitation of a vulnerable adult, (ii) financial exploitation of a vulnerable adult by an agent, and (iii) abuse and neglect of a vulnerable adult. This bill is a recommendation of the	executive, Apr 4, 2024: Approved by Governor-Chapter 397 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0397)

Bill	Sponsors	Title	Last Action	Latest Version
<u>HB 779</u>	<u>Katrina Callisen</u>	Virginia Criminal Justice Conference. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102980D: 19.2-215.1 House: Bill text as passed House and Senate (HB769ER): 19.2-215.1 Governor: Acts of Assembly Chapter text (CHAP0397): 19.2-215.1		
		Permissible venue; personal injury and wrongful death actions; appointment of administrator on behalf of estate of decedent. Provides that in a personal injury or wrongful death action in which an administrator is appointed on behalf of the estate of a decedent, permissible venue shall lie only in a county or city in which venue would have been properly laid if the person for whom such appointment is made had survived. This bill is a recommendation of the Boyd-Graves Conference and is identical to SB 138. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102436D: 8.01-262, 64.2-454 House: Bill text as passed House and Senate (HB779ER): 8.01-262, 64.2-454 Governor: Acts of Assembly Chapter text (CHAP0050): 8.01-262, 64.2-454	executive, Mar 8, 2024: Approved by Governor-Chapter 50 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0050)
<u>HB 783</u>	<u>Charniele L. Herring</u>	Adoption; parental placement and agency adoption; discharge of newborn infant. Authorizes a hospital to release a child to his prospective adoptive parents when the birth parent has executed a health care power of attorney. The bill contains technical amendments. This bill incorporates HB 112. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102449D: 16.1-277.01, 20-166, 20-167, 54.1-2969, 63.2-1201.1, 63.2-1230, 63.2-1233 House: Committee substitute printed 24105836D-H1: 20-166, 20-167, 63.2-1201.1, 63.2-1230 House: Bill text as passed House and Senate (HB783ER): 20-166, 20-167, 63.2-1201.1, 63.2-1230	executive, Mar 14, 2024: Approved by Governor-Chapter 90 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0090)
<u>HB 784</u>	<u>Charniele L. Herring</u>	Entry or modification of child and spousal support orders; determination of support overages. Specifies that all orders directing or modifying the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support shall contain a statement as to whether support overages exist and certain details about such overages. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102451D: 20-60.3, 20-107.1 House: Bill text as passed House and Senate (HB784ER): 20-60.3, 20-107.1 Governor: Acts of Assembly Chapter text (CHAP0051): 20-60.3, 20-107.1	executive, Mar 8, 2024: Approved by Governor-Chapter 51 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0051)
<u>HB 871</u>	<u>Mark L. Earley, Jr.</u>	Campgrounds; inherent risks; liability. Provides that a person who goes camping at a campground shall be presumed to have known the inherent risks of camping, as defined in the bill. The bill provides that a camping professional, as defined in the bill, shall not be liable for the injury to or death of a camping participant resulting from the inherent risks of camping. The bill further provides that no camping participant or camping participant's representative is authorized to maintain an action against or recover from a camping professional for injury to, loss or damage by, or death of the camping participant resulting exclusively from any of the inherent risks of camping, provided that in any action for damages against a camping professional for camping activity, the camping professional pleads the affirmative defense of assumption of the risk. The bill excludes from such immunity acts taken by a camping professional to intentionally cause personal injury or death or property damage, acts made with a willful or wanton disregard for the safety of the camping participant, and	House, Feb 13, 2024: Left in Courts of Justice	House: Prefiled and ordered printed; offered 01/10/24 24103921D

Bill	Sponsors	Title	Last Action	Latest Version
		instances wherein the camping professional has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity and does not make the danger known to the camping participant. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24103921D: 35.1-1		
<u>HB 890</u>	<u>Mark L. Earley, Jr.</u>	Best interests of the child; assuring frequent and continuing contact with both parents. Provides that, in determining the best interests of a child for purposes of custody and parenting time arrangements, upon request of either party, the court shall assure a minor child of frequent and continuing contact with both parents so as to maximize the amount of time the minor child spends with each parent. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24102192D: 20-124.3	House, Feb 2, 2024: Continued to 2025 in Courts of Justice by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24102192D
<u>HB 1226</u>	<u>Sam Rasoul</u>	Workers' compensation benefits; post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by law-enforcement officers and firefighters. Removes the provision in the Virginia Workers' Compensation Act requiring that benefits for post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by law-enforcement officers and firefighters acting in the line of duty be provided for a maximum of 52 weeks from the date of diagnosis. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24101680D: 65.2-107	House, Feb 9, 2024: Continued to 2025 in Appropriations by voice vote	House: Prefiled and ordered printed; offered 01/10/24 24101680D
<u>HB 1300</u>	<u>A.C. Cordoza</u>	"Occupational disease" definition. Clarifies that for the purpose of worker's compensation claims, an "occupational disease" does not include certain physical conditions resulting from repetitive and sustained physical stressors. Statutes affected: House: Prefiled and ordered printed; offered 01/10/24 24105175D: 65.2-400	House, Feb 13, 2024: Left in Labor and Commerce	House: Prefiled and ordered printed; offered 01/10/24 24105175D
<u>HB 1343</u>	<u>Amanda E. Batten</u>	Civil jurisdiction of general district courts and circuit courts; transfer. Provides that while a matter is pending in general district court, upon motion of either the plaintiff or defendant seeking to increase the amount of the claim, the court is required to order a transfer to circuit court without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit. Similarly, the bill provides that while a matter is pending in circuit court, upon motion of either the plaintiff or defendant seeking to decrease the amount of the claim, the court is required to order a transfer to general district court. Under current law, both of these provisions apply only to the motion of a plaintiff. Statutes affected: House: Presented and ordered printed 24104436D: 16.1-77, 17.1-513	House, Feb 13, 2024: Left in Courts of Justice	House: Presented and ordered printed 24104436D
<u>SB 95</u>	<u>William M. Stanley, Jr.</u>	Preliminary analysis of breath to determine alcoholic content of blood; failure to advise person of rights. Provides that if a police officer or a member of any sheriff's department fails to advise a person of his rights to refuse a preliminary breath test, any preliminary breath test sample shall not be admissible by the Commonwealth in any motion to suppress for the purpose of determining probable cause. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24102057D: 18.2-267 Senate: Printed as engrossed 24102057D-E: 18.2-267 Senate: Bill text as passed Senate and House (SB95ER): 18.2-267 Governor: Acts of Assembly Chapter text (CHAP0759): 18.2-267	executive, Apr 8, 2024: Approved by Governor-Chapter 759 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0759)

Bill	Sponsors	Title	Last Action	Latest Version
SB 138	Jennifer D. Carroll Fox	Permissible venue; personal injury and wrongful death actions; appointment of administrator on behalf of estate of decedent. Provides that in a personal injury or wrongful death action in which an administrator is appointed on behalf of the estate of a decedent, permissible venue shall lie only in a county or city in which venue would have been properly laid if the person for whom such appointment is made had survived. This bill is a recommendation of the Boyd-Graves Conference and is identical to HB 779. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24101470D: 8.01-262, 64.2-454 Senate: Bill text as passed Senate and House (SB138ER): 8.01-262, 64.2-454 Governor: Acts of Assembly Chapter text (CHAP0340): 8.01-262, 64.2-454	executive, Apr 2, 2024: Approved by Governor-Chapter 340 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0340)
SB 241	Jeremy S. McPike	Workers' compensation; notice of right to dispute claim. Requires that when an employee's workers' compensation claim is denied, an employer or insurer shall include in its letter denying benefits a notice that the employee has a right to dispute the claim denial through the Virginia Workers' Compensation Commission.	executive, Apr 5, 2024: Approved by Governor-Chapter 584 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0584)
SB 256	Scott A. Surovell	Motor vehicle insurance claims; bad faith. Provides that if an insurance company licensed in the Commonwealth to write motor vehicle insurance (i) denies, refuses, fails to pay, or fails to make a timely and reasonable settlement offer to its insured under the provisions of any uninsured or underinsured motorist benefits coverage in a policy of motor vehicle insurance applicable to the insured after the insured has become legally entitled to recover or (ii) after all applicable liability policy limits and underlying uninsured and underinsured motorists benefits have been tendered or paid, rejects a reasonable settlement demand made by the insured within the policy's coverage limits for uninsured or underinsured motorist benefits or fails to respond within a reasonable time after being presented with such demand after the insured has become legally entitled to recover, and it is subsequently found by a court of proper jurisdiction that such denial, refusal, or failure to timely pay or failure to make a timely and reasonable settlement offer, rejection of a reasonable settlement demand, or failure to timely accept a reasonable settlement demand was not made in good faith, in addition to the amount due and owing by the insurance company to its insured on the judgment against the tortfeasor, the insurance company shall also be liable to the insured in an amount up to double the amount of the judgment obtained against the underinsured motorist, uninsured motorist, immune motorist,...	House, Apr 17, 2024: Enacted, Chapter 781 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0781)
SB 259	Scott A. Surovell	Civil actions filed on behalf of multiple persons; class actions. Provides that one or more members of a class may, as representative parties on behalf of all members, bring a civil action or may be proceeded against in a civil action, provided that (i) the class is so numerous that joinder of all members or proceeding with such actions on an individual basis is impracticable or contrary to judicial economy; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (iv) the representative parties shall fairly and adequately protect the interests of the class. The bill further sets out the procedure to certify a class action, the duties of counsel appointed in a class action, the various orders a court may issue during the course of a class action, and the process by which a settlement, voluntary dismissal, or compromise may occur. The bill has a delayed effective	Senate, Apr 17, 2024: Senate sustained Governor's veto	Senate: Bill text as passed Senate and House (SB259ER)

Bill	Sponsors	Title	Last Action	Latest Version
		date of January 1, 2025, and is identical to HB 418. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24104395D: 8.01-267.1, 40.1-27.3		
<u>SB 388</u>	<u>Stella G. Pekarsky</u>	Virginia Consumer Protection Act; prohibited practices; mandatory fees disclosure. Prohibits a supplier in connection with a consumer transaction from advertising, displaying, or offering any pricing information for goods or services without prominently displaying the total price, which shall include all mandatory fees or charges other than taxes imposed. The bill defines "mandatory fees or charges" as any fee or surcharge that must be paid in order to purchase the advertised good or service, that is not reasonably avoidable, and that a reasonable consumer would expect to be included. The bill clarifies that such term does not include shipping fees or taxes or fees imposed by a government or government-approved entity. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24104448D: 59.1-200 Senate: Committee substitute printed 24106726D-S1: 59.1-200 Senate: Conference substitute printed 24109156D-S2: 59.1-200 Senate: Second Conference substitute printed 24109190D-S3: 59.1-200	House, Mar 9, 2024: Failed to pass in House	Senate: Second Conference substitute printed 24109190D-S3
<u>SB 520</u>	<u>Angelia Williams Graves</u>	Workers' compensation; injuries caused by repetitive and sustained physical stressors. Provides that, for the purposes of the Virginia Workers' Compensation Act, "occupational disease" includes injuries or diseases from conditions resulting from repetitive and sustained physical stressors, including repetitive and sustained motions, exertions, posture stresses, contact stresses, vibrations, or noises. The bill provides that such injuries or diseases are covered under the Act and that such coverage does not require that such repetitive or sustained physical stress occurred over a particular time period, provided that the time period over which such physical stress occurred can be reasonably identified. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24103836D: 65.2-400	Senate, Jan 31, 2024: Continued to 2025 in Finance and Appropriations (15-Y 0-N)	Senate: Prefiled and ordered printed; offered 01/10/24 24103836D
<u>SB 570</u>	<u>Adam P. Ebbin</u>	Virginia Human Rights Act; definition of "employer." Waives the Commonwealth's sovereign immunity to a civil action under the definition of "person" in relevant law. The bill also expands the definition of "employer" as it relates to the requirement to provide reasonable accommodation for persons with disabilities under the Virginia Human Rights Act to include any government or political subdivision, or agent of such government or political subdivision, employing more than five employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The bill also reduces the number of employees from 15 to five for the definition of employer of domestic workers. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24104820D: 2.2-3901, 2.2-3905, 2.2-3905.1 Senate: Committee substitute printed 24107379D-S1: 2.2-3905, 2.2-3905.1 Senate: Printed as engrossed 24107379D-ES1: 2.2-3905, 2.2-3905.1 Senate: Bill text as passed Senate and House (SB570ER); 2.2-3905, 2.2-3905.1	Senate, Apr 17, 2024: Senate sustained Governor's veto	Senate: Bill text as passed Senate and House (SB570ER)
<u>SB 579</u>	<u>Mark D. Ohenshain</u>	Nursing homes and certified nursing facilities; professional liability insurance. Specifies that the required minimum amount of professional liability coverage for nursing homes and certified nursing facilities is the amount per occurrence. The bill also requires such coverage to be noneroding, i.e., the coverage limits are not	Senate, Feb 1, 2024: Continued to 2025 in Education and Health (15-Y 0-N)	Senate: Prefiled and ordered printed; offered 01/10/24 24103088D

Bill	Sponsors	Title	Last Action	Latest Version
		reduced by legal costs. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24103088D: 32.1-127		
<u>SB 587</u>	<u>Lamont Bagby</u>	Civil actions filed on behalf of multiple persons. Provides that a circuit court may enter an order joining, coordinating, consolidating, or transferring civil actions upon finding that separate civil actions brought by a plaintiff on behalf of multiple similarly situated persons involve common questions of law or fact and arise out of the same transaction, occurrence, or series of transactions or occurrences. Under current law, such order is permitted only where six or more plaintiffs have filed such actions. The bill further requires the Supreme Court of Virginia to promulgate rules no later than November 1, 2024, governing such actions. The bill has a delayed effective date of July 1, 2025, except that the provisions of the bill requiring the Supreme Court to promulgate rules are effective in due course. Statutes affected: Senate: Prefiled and ordered printed; offered 01/10/24 24103334D: 8.01-267.1	Senate, Jan 24, 2024: Incorporated by Courts of Justice (SB259-Surovell) (15-Y 0-N)	Senate: Prefiled and ordered printed; offered 01/10/24 24103334D
<u>SB 725</u>	<u>Todd E. Pillion</u>	Drug Treatment Court Act; name change. Renames the Drug Treatment Court Act as the Recovery Court Act. The bill also directs the Supreme Court of Virginia to rename the state Drug Treatment Court Advisory Committee as the Recovery Court Advisory Committee. This bill is identical to HB 292. Statutes affected: Senate: Presented and ordered printed 24105103D: 18.2-251.02, 18.2-254.1 Senate: Bill text as passed Senate and House (SB725ER): 18.2-251.02, 18.2-254.1 Governor: Acts of Assembly Chapter text (CHAP0130): 18.2-251.02, 18.2-254.1	executive, Mar 20, 2024: Approved by Governor-Chapter 130 (effective 7/1/24)	Governor: Acts of Assembly Chapter text (CHAP0130)

36 bills

Short Circuits

Practice tips from the Circuit Court

By: Amy H. Jones
Staff Attorney

LEGISLATIVE UPDATE PLUS TIPS AND REMINDERS RELATING TO PROCEDURES AND ORDERS

Legislative update

July 1, 2024 amendments to support notices

Both the child support (§ 20-60.3) and spousal support (§ 20-107.1(H)) notices were amended to add notices regarding *overages*. As with arrearages, if there are no overages the new notice can be addressed by stating there are no overages. Please take a look at the new statute (available for free on various web sites) and spread the word!

Service of process on corporations and LLC's

If you need to serve a corporation or LLC, be sure to check the applicable statutes and/or House Bill 794. There were a number of changes made, particularly as regards service on statutory agents.

Electronic signatures on pleadings

This is now permissible pursuant to amendments to § 8.01-271.1. The Virginia Beach Circuit Court has been accepting electronic signatures on orders since the COVID judicial emergency. Based upon how those have been handled, your safest bet is to use some facsimile of an actual signature for your electronic signature, and definitely not just "/s/." Other variants would need to be

assessed by the court on a case-by-case basis.

More changes to guardian/conservator statutes

A lot of major changes were made to these effective July 1, 2023, and more were added this year. If you have not read through these statutes in a while, and do not regularly file guardian/conservator petitions, I would encourage you do to so before filing.

First, § 64.2-2003, which governs guardian ad litem reports, added more considerations for the GAL in evaluating the suitability of the proposed guardian and/or conservator. These include whether the proposed fiduciary is a "professional guardian," their capacity to serve as guardian, and whether they have been found to have committed abuse or neglect against the respondent. If you serve as a GAL in these types of matters, please be sure that you include the newly required information in your report.

Next, § 64.2-2009(E)(4) now requires that the order of appointment include court contact information so that an unrepresented respondent can request that they be restored to capacity, or that the guardianship be modified or terminated. The information to be used for this court in your order is the following:

If the person subject to the guardianship is not represented by counsel, such person may initiate the process by sending informal written communications to the Hon. Tina E. Sinnen, Clerk, Virginia Beach Circuit Court, 2425 Nimmo Parkway, Virginia Beach, VA; court's email address tbentwisle@vacourts.gov

If you do not include this in your order, you'll be asked to do so as part of the review process prior to the hearing, and this language can be provided to you.

As a reminder, under last year's changes (effective July 1, 2023), guardian/conservator petitions should contain no financial information at all. Therefore, please do not say "respondent has no assets" or the like in the petition. You do need to at least refer to "financial resources are stated in the separate confidential addendum filed herein," but do not provide any details in the petition. The Supreme Court recently has developed a form addendum for this as well, available at its web site under "Circuit Court Fiduciary Forms."

"Old news"/reminders

Need to use the court's current affidavit for the moving party in a divorce

Because of statutory changes effective July 1, 2023 regarding information about minor children, the court had to update its form affidavit. If you keep the court's affidavit saved to your network, please be sure to replace it with the current version. The correct version will have a "July 1, 2023" revision date on the top right corner.

Also, please try to skim your affidavit before submitting it to be sure basic information is correct, and that all

boxes have been checked properly. That will help you avoid a common reason for return of final decrees.

Use of current VS-4 form: e-filing of final decrees and submission of the VS-4

In July of 2020, the VS-4 form that must be submitted in divorces was revised to remove "race" as a line item. The Clerk's Office asks that you please use the current form. Correct VS-4 forms are available from the Clerk's Office.

Also, please be sure your VS-4 is already in the file before you e-file your final decree. Some attorneys have been e-filing their decree and mailing the VS-4 separately at the same time. We cannot enter the decree until we have the VS-4, and cannot hold the decree waiting to track the VS-4. E-filing always beats mail, so we have to return final decrees in that situation.

Please do not pre-fill in any part of the date of entry on orders

The majority of orders submitted for entry already have some part of the date filled in after "Enter." We try to catch and correct these when they are incorrect, but some do get missed, which obviously causes problems later. If the order simply contains a blank line for the date of entry so that the judge can fill in the full date, that is all that is needed and will help avoid any errors.

[Thank you to the VBBA for offering a way to get this information out separately from publication of the newsletter!]



2024 Annual Bench ~ Bar Conference: The Virginia Beach General District Court

Virginia Landlord ~ Tenant 2024

****Materials Graciously Provided by Your VBBA Board and GDC Committee**

v

Panelists:

The Hon. Paul Merullo

The Hon. Vivian Henderson

The Hon. Wanda Cooper

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Virginia Beach General District Court ~ 2024

Bench Bar: Virginia Landlord Tenant Update and Refresher

APPLICABILITY OF THE VRLTA

55.1-1201. Applicability of chapter; local authority

- VRLTA applies to single-family and multifamily dwelling units
 - Dwelling unit – 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 a manufactured home, as defined in § 55.1-1300 (§ 55.1-1200. Definitions).
 - Single-family residence - a structure, other than a multifamily 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 does not share heating facilities, hot water equipment, or any other essential facility or essential service with any other dwelling unit (§ 55.1-1200. Definitions).
 - Multifamily dwelling unit - more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building (§ 55.1-1200. Definitions).
- VRLTA does not apply to:
 - Residence at a public or private institution, incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;
 - Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
 - Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

- Occupancy in a campground;
- Occupancy by a tenant who pays no rent pursuant to a rental agreement;
- Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days;
- 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;
- Occupancy in a recovery residence; or
- A guest that is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act, boardinghouse, or similar transient lodging if such person does not reside in such lodging as his primary residence.

→ Generally, if a person resides in such a facility or lodging for 90 consecutive days or less, such lodging shall not be subject to the provisions of the VRLTA. However, the owner of such lodging shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon expiration of the five-day period specified in the notice, may exercise self-help eviction.

→ 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, boardinghouse, or other similar transient lodging as 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.

• Question → What about short term rentals?

§ 55.1-1201. Applicability of chapter; local authority.

- A. This chapter 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 or commissions or other instrumentalities or by the courts of the Commonwealth. Occupancy in a public housing unit or other housing unit that is a dwelling unit is subject to this chapter; however, if the provisions of this chapter are inconsistent with the regulations of the U.S. Department of Housing and Urban Development, such regulations shall control.
- B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily dwelling units and multifamily dwelling units located in the Commonwealth.
- C. The following tenancies and occupancies are not residential tenancies under this chapter:
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 by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
 3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
 4. Occupancy in a campground as defined in § 35.1-1;
 5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;
 6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days;

7. 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; or

8. Occupancy in a recovery residence as defined in § 37.2-431.1.

D. The following provisions apply to occupancy in a hotel, motel, extended stay facility, etc.:

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 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, and the innkeeper or property owner, or his agent, 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 eviction issued pursuant to such action, which would otherwise be required under this chapter.
2. A hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.
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 (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as his primary residence for 90 consecutive days or less, such lodging shall not be subject to the provisions of this chapter. 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.
4. 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 (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as 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.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth.

E. Nothing in this chapter shall prohibit a locality from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts that may arise out of the application of this chapter, nor shall anything 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 ordinances or regulations concerning landlord and tenant relations and the leasing of residential property.

PROHIBITED PROVISIONS IN RENTAL AGREEMENTS

55.1-1208. Prohibited Provisions in Rental Agreements

- **Question → Can lease agreements waive rights or remedies made non-waivable by statute?**
 - Virginia law says no. Parrish v. Vance, 80 Va. App. 426, 436 (2024)
- A rental agreement shall not contain provisions that the tenant:
 - waives rights or remedies under this chapter;
 - waives rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

- authorizes any person to confess judgment on a claim arising out of the rental agreement;
- agrees to pay the landlord's attorney fees except as provided in this chapter;

Question → when are landlords permitted to recover attorneys fees?

- 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 any associated costs;
- 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;
- agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two months' periodic rent; or
- agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act; however, upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies as to that dispute in order to facilitate a resolution.
- Any prohibited provision that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by him and reasonable attorney fees.

Question → is the warranty of habitability

waivable? No. The warranty of habitability provided in Code § 55.1-1220(A) is not waivable. The language of Code § 55.1-1220(A) suggests that a tenant's right to have the landlord make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition cannot be waived. Parrish v. Vance, 80 Va. App. 426, 439 (2024)

§ 55.1-1208. Prohibited provisions in rental agreements.

- A.** A rental agreement shall not contain provisions that the tenant:
1. Agrees to waive or forgo rights or remedies under this chapter;
 2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;
 3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
 4. Agrees to pay the landlord's attorney fees except as provided in this chapter;
 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 any associated costs;
 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;
 7. Agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two months' periodic rent; or
 8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act;

however, upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies as to that dispute in order to facilitate a resolution.

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

LANDLORD TO MAINTAIN FIT PREMISES

55.1-1220. Landlord to maintain fit premises.

- A landlord shall:
 - Comply with the building and housing codes materially affecting health and safety;
 - Make repairs and keep the premises in a fit and habitable condition;

→ "Virginia has not yet expressly defined the terms 'fit and habitable.' 'habitable' means 'adquate, appropriate for residence, capable of being inhabited, comfortable, fit for dwelling, fit for habitation, fit to be occupied, fit to live in, inhabitable, livable, residential suitable, suitable for living in tenantable.'" Parrish v. Vance, 80 Va. App. 426, 437 (2024) citing Burton's Legal Thesaurus (6th ed. 2021).

Question – how does the Court define “fit and habitable?”

→ Whether a property is habitable is a question of fact, which makes it a factual finding that is reviewable only if it is plainly wrong or unsupported by the evidence. Parrish v. Vance, 80 Va. App. 426, 440 (2024), citing Grayson v. Westwood Bldgs. L.P., 300 Va. 25, 28 (2021).

- Keep all common areas in a clean and structurally safe condition;
- Maintain all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
- Maintain the premises to prevent accumulation of moisture and mold and promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55.1-1227. Where there is visible evidence of mold, the landlord shall remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 and reinspect the dwelling unit to confirm no visible evidence of mold. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege;
- Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other and arrange for the removal of same;
- Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season unless 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

- Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.
- The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 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.

→ "Construing Code § 55.1-1220 as a consistent whole, the fact that section (D) states that the highlighted sections can be waived by an agreement between a landlord and tenant in writing suggest that the other unnamed sections cannot be waived. Parrish v. Vance, 80 Va. App. 426, 439 (2024)

§ 55.1-1220. 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 a multifamily 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 promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55.1-1227. 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 provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants;
 6. Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of dwelling units and arrange for the removal of same;
 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. Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.
- 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 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 3, 6, and 7 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.

TENANT TO MAINTAIN DWELLING UNIT

55.1-1227. Tenant to maintain dwelling unit.

- In addition to the provisions of the rental agreement, the tenant shall:
 - Comply with building and housing codes materially affecting health and safety;
 - Keep the dwelling unit clean and safe;
 - Keep the dwelling unit free from insects and pests, and promptly notify the landlord of the existence of any insects or pests;
 - Remove all ashes, garbage, rubbish, and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;
 - Keep all plumbing fixtures in the dwelling unit or used by the tenant clean;
 - Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including an elevator in a multifamily 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;
- Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so;
 - Not remove or tamper with a properly functioning smoke alarm;
 - Not remove or tamper with a properly functioning carbon monoxide alarm;
 - Use reasonable efforts to maintain the dwelling unit to prevent accumulation of moisture and the growth of mold and promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold;
 - Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord;
 - Be responsible for his conduct and the conduct of other persons who are on the premises with his consent, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;
 - Abide by all reasonable rules and regulations imposed by the landlord;
 - Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests; and
 - Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party or property damage.

§ 55.1-1227. 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 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;
 5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
 6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including an elevator in a multifamily 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. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person, whether known by the tenant or not, to do so;
 8. Not remove or tamper with a properly functioning smoke alarm installed by the landlord, including removing any working batteries, so as to render the alarm inoperative. The tenant shall maintain the smoke alarm in accordance with the uniform set of standards for maintenance of smoke alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of 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 the removal of any working

batteries, so as to render the carbon monoxide alarm inoperative. The tenant shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

- 10.** 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 promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;
- 11.** 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.** 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, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;
- 13.** Abide by all reasonable rules and regulations imposed by the landlord;
- 14.** Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied; and
- 15.** Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

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.

TENANT'S ASSERTION; RENT ESCROW

55.1-1244. Tenant's assertion; rent escrow.

- A tenant may request relief from a condition on the leased premises if it:
 - is a material noncompliance with the rental agreement or the law;
 - will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including:
 - a lack of heat or hot or cold running water, except 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;
 - a lack of light, electricity, or adequate sewage disposal facilities;
 - an infestation of rodents; or
 - the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint.
- To obtain relief, tenant must show:
 - the landlord refused or failed to remedy the condition after receiving written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice.

- there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable
 - the tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due.
- The landlord may rebut the tenant's assertion by establishing:
 - the conditions alleged do not exist;
 - such conditions have been removed or remedied;
 - such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or
 - the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.
- The court may order one or more of the following:
 - Termination of the rental agreement or surrender of the premises to the landlord;
 - The return of money already accumulated in escrow to the landlord or to the tenant;
 - Continuing escrow until the conditions causing the complaint are remedied;
 - Abate rent or money paid into escrow.
 - In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;
 - The return of money 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;

- The referral of any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report;
- disbursement of escrow to pay a mortgage on the property in order to stay a foreclosure; or
- disburse escrow funds to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

§ 55.1-1244. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water, except 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; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (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 in which the premises 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 or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. 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 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 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 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; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family 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 any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the 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 any condition found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, 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 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, within five days of date due under the rental agreement, subject to any abatement under this section, rents that become due during the period of the continuance, to be held by the court pending its further order;
 7. Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or
 8. 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 subsection D, where an escrow account is established by the court and the condition 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 of the period, the condition has not been remedied.
- F.** The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord as authorized by § 55.1-1216, 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 disposal facilities, or any other condition 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 as to that breach.

G. In cases where the court deems that the tenant is entitled to relief under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

ADDITIONAL QUESTIONS

HOW DOES THE COURT PREFER PARTIES TO HANDLE EXHIBITS?

- attach to bill of particulars and grounds of defense?
- if so, do all exhibits need to be formally admitted into evidence?
- If so, when and how to handle objections to exhibits?
- provide to opposing parties / counsel prior to trial and not attach to pleadings?
- present / admit at trial?

WHAT ELSE SHOULD PARTIES AND COUNSEL KNOW / DO TO EFFICIENTLY PRESENT A CASE IN GDC?

WHAT CHANGES WOULD THE COURT LIKE TO SEE WITH THE HANDLING AND PRESENTATION OF LANDLORD / TENANT CASES?

Virginia Beach General District Court

****Additional Bonus Topic Presented
by Judge Merullo**

Bond Hearings

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Considerations for the Prosecution & Defense