

VIRGINIA EVICTION DIVERSION PROGRAM

INTERIM REPORT

Virginia Housing Commission
November 30, 2022

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Executive Summary

The General Assembly passed SB 24 in 2022 and it was signed into effect by the Governor. It included the provision requiring this Interim Report. The following is the applicable language: *That beginning on July 1, 2022, the Virginia Housing Commission shall evaluate data submitted by the Office of the Executive Secretary of the Virginia Supreme Court relating to the eviction diversion pilot program.*

There was very limited data available to analyze for this interim report. There were very few participants who used the Pilot Eviction Diversion Court (Pilot). The reasons were the stringent guidelines to qualify for the Pilot and the court closures and other available programs to avert eviction during the Covid-19 Pandemic.

This October, 2022, a group of legislators from the Virginia Housing Commission observed the General District Court proceeding at the John Marshall Court House in Richmond to see the Pilot being utilized. Those present included the Chair, Delegate Danny Marshall, Vice-Chair, Senator Mamie Locke and Senator Gazala Hashmi; they were accompanied by Bryan Horn, the Director of the Virginia Department of Housing and Community Development, and other housing stakeholders representing both the landlord and tenant communities. They watched Judge Devika Davis preside over the docket and rule on many landlord/tenant issues including unlawful detainer suits. The group didn't see tenants using the Pilot because the tenants didn't fulfill the criteria to be eligible to use the program.

The Judge explained to the observers that none of the tenants that day met the criteria to be considered for the Pilot. She said generally by the time the tenants and landlords come to court to resolve the tenants' nonpayment of rent, too many months have gone by to fulfill the Pilot guidelines. More specifically, § 55.1-1262 A (5) that says ...Has not been late within the last 12 months (i) more than two times in six months (ii) more than three times in 12 months. The usual course of action, she said, is the landlord and tenant wait until the third month to take legal action.

The sample size for the program data provided by the Office of the Executive Secretary of the Virginia Supreme Court is very small. It was difficult to determine the Pilot's effectiveness with such a small sample of users.

The cities of Richmond, Norfolk, Danville and Petersburg were all Pilot locations for the program. Only the cities of Richmond and Norfolk used the Pilot Eviction Diversion program at all, the specifications are outlined further in this interim report.

Because of the Pandemic and the availability of state and federal programs to pay rents during the emergency; most evictions in the Commonwealth were stayed until July of 2022.

One of the reasons there was a lack of data to be interpreted about the Pilot is that until July 2022 the many landlords and tenants utilized the Virginia Rent Relief Program (RRP) administered through the Department of Housing and Community Development. It provided funding for rental assistance for those whose housing difficulties resulted from the Covid-19 Pandemic and both landlords and tenants could apply. The Commonwealth received money through the Federal CARES Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and from the American Rescue Plan Act of 2021 (ARPA) (P.L. 117-2) Program (which exempted many tenants who live in units subsidized either directly by the federal government or indirectly including rental housing with a Fannie Mae or Freddie Mac insured mortgage or rental housing built with low-income-housing-tax credits, or rural funding) and those dollars funded the DHCD program.

Another reason there were fewer eviction proceedings during this time period is that the Governor declared a state of emergency related to the COVID-19 Pandemic, This was in effect until June 30, 2021. Also, during the 2020 Reconvened Session, House Bill 340, Virginia Code § 44-209 was passed. It allowed a tenant a 60-day stay for an unlawful detainer for nonpayment of rent. Caveats included the tenant being able to prove his inability to pay rent was a result of Covid- 19. The remainder of eviction stays expired 90 days after the Governor's declared state of emergency ended. Thus fewer tenants had a need to use the Pilot.

This report gives an overview of the requirements for the Pilot, the usage and the process of evicting in Virginia. It also looks at other states' legislation to combat evictions that has worked and other legislation that has not been effective.

This Interim Report draws no final conclusions; those will be presented in 2023. More data will be gathered by the Secretary of the Supreme Court of Virginia in the up-coming year.

It is the hope of the Virginia Housing Commission that with a return to a more normal environment, a clearer picture of the Eviction Diversion Pilot Program 's usage and effectiveness in diverting evictions in the Commonwealth will emerge.

Eviction Diversion Pilot Program

In order to combat the eviction problem in the Commonwealth, in 2019 the General Assembly of Virginia passed legislation creating an Eviction Diversion Pilot Program. This trial program was initiated within the General District Courts of four localities in the Commonwealth: Danville, Hampton, Petersburg, and Richmond. The Eviction Diversion Pilot Program (§55.1-1260) aims to reduce the number of evictions of low-income tenants who are not able to pay rent after experiencing job loss, medical bills, or any one-time crisis situation. The program became effective on July 1, 2020 and will expire on July 1, 2024.

The Eviction Diversion Pilot Program is meant to help tenants who experience emergency situations rather than those who are consistently in financial hardship (Figure 1). To be eligible for this court-based eviction diversion pilot, the tenant must not have a repeated history of late payments. In addition, the tenant must be able to pay 25% of the rent and other payments on the court date and make payments under the court payment plan. When the tenant meets the eligibility requirements and enters into a court-ordered payment plan, the tenant is required to pay 25 percent of the amount by the fifth day of each month over the following three months. If the tenant makes all the payments as scheduled by the court-ordered payment plan, the judge shall dismiss the unlawful detainer case as being satisfied. This pilot program facilitates the landlord and tenant entering into a reasonable payment plan, which ensures that the landlord receives full rental payments, and the tenant has the opportunity to make payments and avoid eviction.

The Eviction Diversion Pilot Program is a result of a series of discussions, negotiations, and recommendations from the Virginia Housing Commission's Eviction Workgroup and the legislators who were members of the Virginia Housing Commission. The group which was assembled by the Virginia Housing Commission was composed of members ranging from lawyers to advocacy groups representing both the landlord and tenant points of view. Members were the following:

- Laura Lafayette, Governor Appointee;
- Chip Dicks, Virginia Association of Realtors;
- Martin Johnson, Virginia Realtors;
- Christie Marra, Virginia Poverty Law Center;
- Helen Hardiman, Hardiman Law;
- Martin Wegbreit, Central Virginia Legal Aid Society;
- Ivan Jecklin, Thalhimer Realty;
- Brian Gordon, Apartment & Office Building Association of Metro Washington;
- Andrew Clark, Home Builders Association of Virginia;
- Kelly Harris Braxton, Virginia First Cities;
- Orlando Artze, Richmond Housing Authority.

Soaring rents, stagnation of wages, and unexpected emergencies in life could make renters unable to pay rent on time and vulnerable to eviction. When renters face eviction, their financial hardship worsens, and the children in the household have adverse health and education outcomes. A recent study shows that eviction is associated with higher chances of poor health, developmental risk, and hospital admission to the emergency department in young children (Cutts DB, Ettinger de Cuba S, Bovell-Ammon A, et al.). At a neighborhood level, higher eviction rates can lead to instability (Virginia Commonwealth University).

Eviction Diversion Pilot Program

Eligibility for Participation (§ 55.1-1262)

A tenant in an unlawful detainer case shall participate in the Eviction Diversion Pilot Program if he meets the following eligibility requirements:

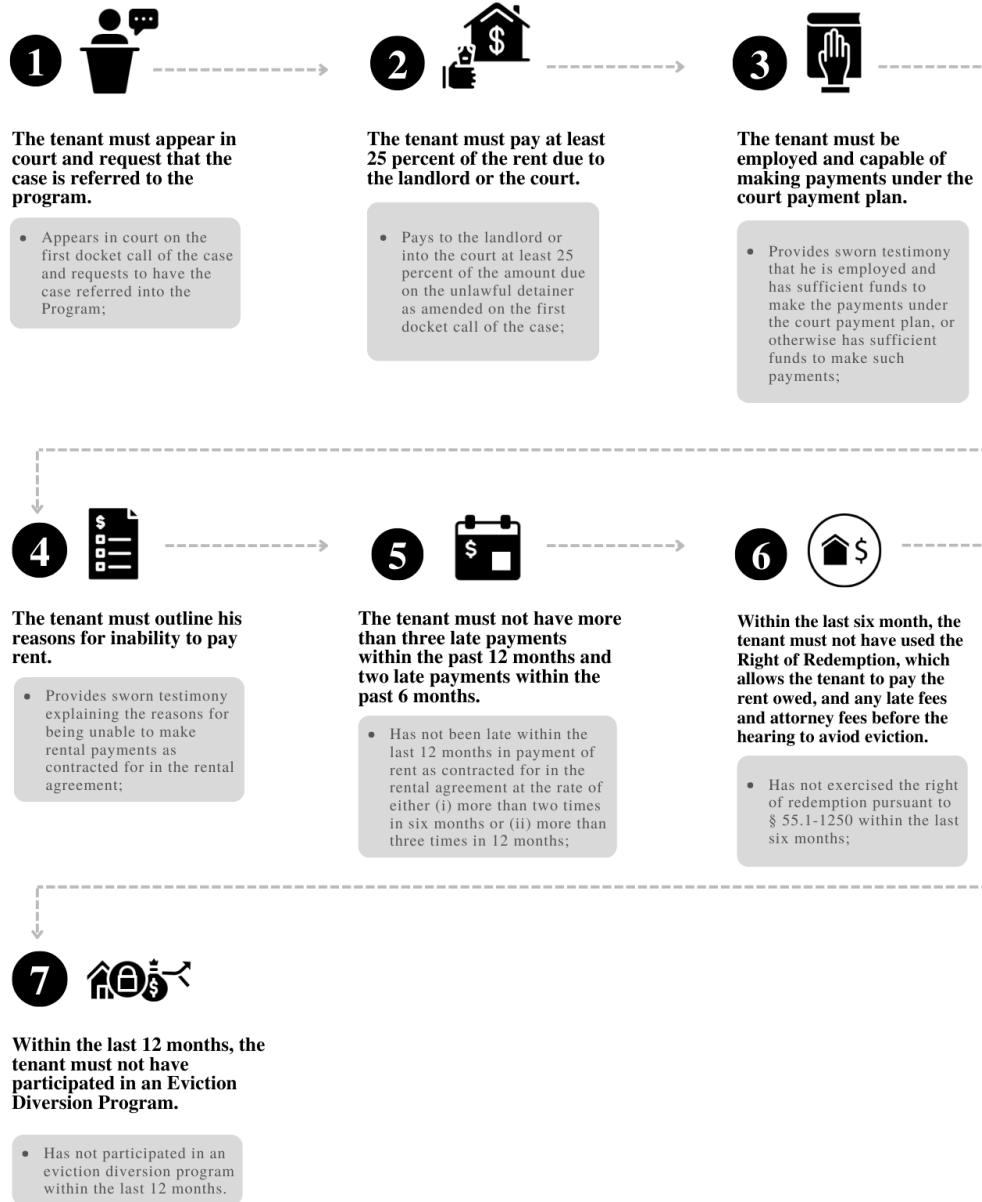


Figure 1: Requirements to participate in the Eviction Diversion Pilot Program ([§ 55.1-1262](#))

Effectiveness of the Pilot Program

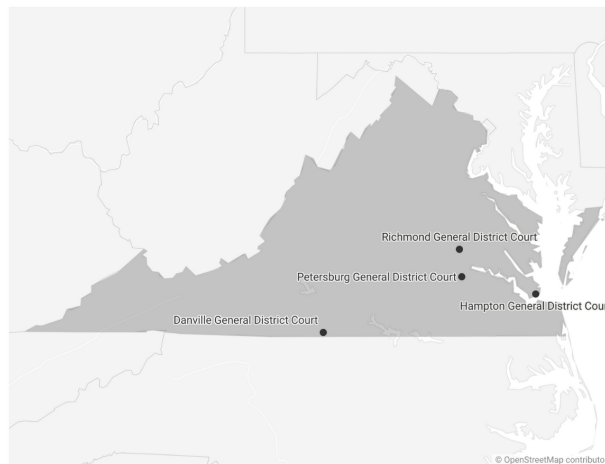
The Virginia Housing Commission is required to evaluate the effectiveness and efficiency of the Eviction Diversion Pilot Program using the data submitted by the Executive Secretary of the Supreme Court of Virginia (Acts of Assembly Chapter 797). The Supreme Court provided information for civil cases for Unlawful Detainer filed in the general district courts of the cities of Danville, Hampton, Petersburg, and the City of Richmond between July 1st, 2020, and July 31st, 2022.

According to the data provided by the Supreme Court,

- **14** eviction cases were referred to the Eviction Diversion Pilot Program statewide between July 1st, 2020, and July 31st, 2022;
 - **12** of these cases were from Richmond Civil General District Court; and
 - **2** cases were from the Hampton General District Court.

Among these 14 cases referred to the Eviction Diversion Pilot Program,

- **9** cases were dismissed;
- **2** cases were ruled in favor of the plaintiff;
- **1** case was nonsuited, in which the plaintiff agreed not to proceed in that suit against the defendant.



Source: Office of the Executive Secretary, Supreme Court of Virginia • Created with Datawrapper

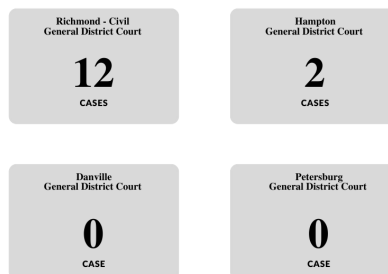


Figure 2: The number of cases referred to the Eviction Diversion Pilot Program at the General District Courts for the cities of Danville, Hampton, Petersburg, and Richmond (Source: Office of Executive Secretary, Supreme Court of Virginia)

Eviction Process in Virginia

Steps Leading to a Landlord Filing an Unlawful Detainer Suit

When the tenant fails to pay the rent or violates the lease agreement, the landlord may begin an eviction procedure. Most standard leases allow for a five-day grace period after the date the rent is due for the tenant to pay the rent and not be in arrears. If the tenant does not pay within that time frame and has not made a written agreement with the landlord to pay differently, the landlord may begin the legal eviction of the tenant. The landlord must provide the tenant with a **Pay or Quit Notice**. This is a written notice to pay the amount owed in rent or vacate the rental property. The tenant has five days to pay or leave with his/her possessions.

There are lease violations other than nonpayment of rent. Common examples of other lease violations are the tenant causing damage to the property, having more people than the lease allows to live on the premises, or having pets when not allowed. In these situations, the landlord provides in writing and by the same means discussed above a **30-day Notice to Quit or Cure**. The tenant has 21 days to remedy the situation or move by the end of 30 days, or the landlord can file an unlawful detainer (eviction) suit.

The landlord must submit the notice in writing and note the date served on the tenant. It may be hand-delivered, sent by certified mail, placed on the door of the rental property, or sent by email if lease provisions allow for email notification. The landlord must state the amount of rent owed, including any late fees, to whom the rent needs to be paid, and the date the eviction proceedings will begin.

If the tenant pays the rent and fees at this point and within this time frame, the landlord shall not continue with the proceeding. The tenant must pay the amount owed using a cashier's check, certified check, or cash. The tenant may also move out with all the belongings. This doesn't prohibit the landlord from filing a suit in General District Court for the amount of rent due, but this is not an eviction procedure.

If there are violations other than late rent, the landlord may **Accept the Rent with Reservation**. This means the landlord accepts the rent due but goes forward with the court process so that the judge may determine other issues that may be in conflict and rule on other lease violations. If the tenant does nothing, the landlord files an **Unlawful Detainer** suit, which is the legal name for an eviction suit.

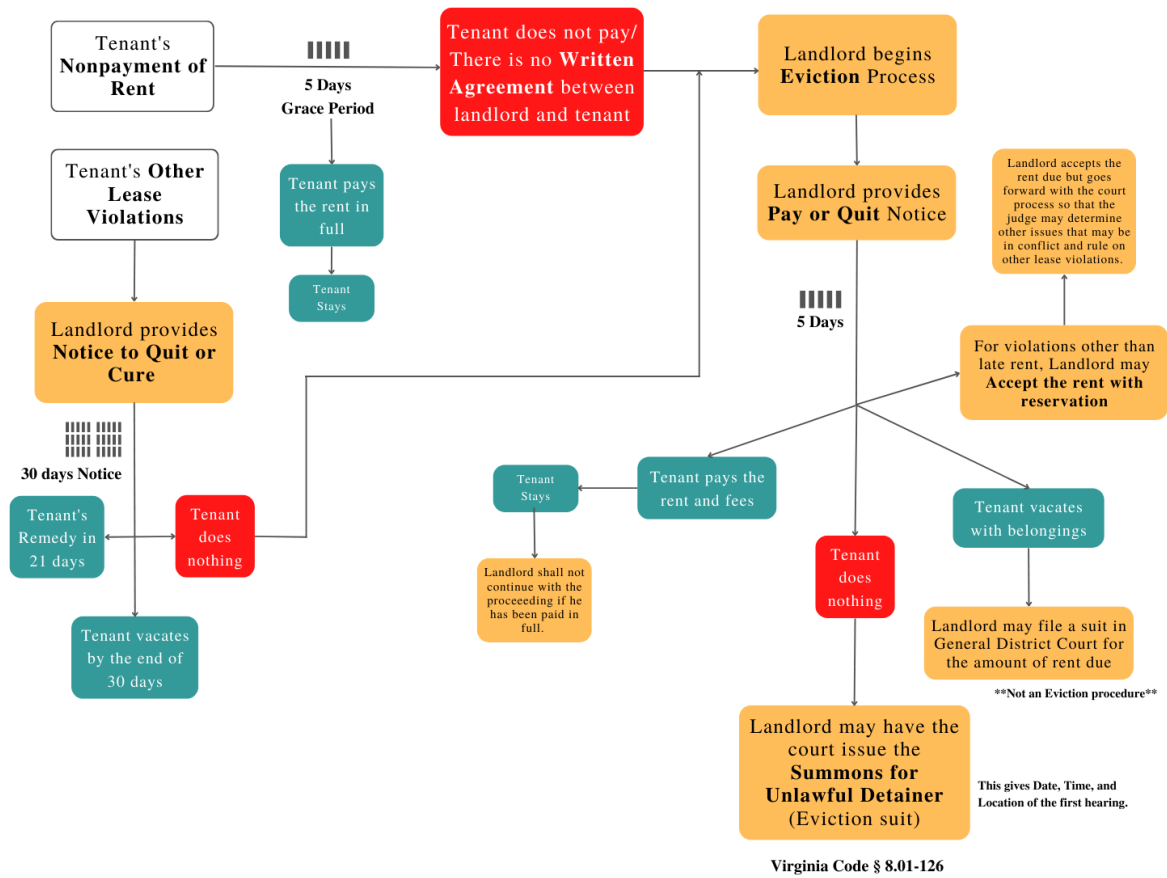


Figure 3: Path towards Unlawful Detainer (Eviction Suit): Virginia Code §.8.01 - 126 (Source: A Legislator’s Guide to Residential Eviction Legislation)

Steps Leading to a Judge Making an Eviction Determination

A summons issued by the Clerk of the Court notifies the tenant of the date of the eviction hearing, which is called an **Unlawful Detainer Hearing**. It must be served by personal service, served on the tenant by the Sheriff's Office, or posted on the property in dispute, and must also be mailed to the tenant's last known address.

If the tenant wants to contest the eviction, the tenant must appear in court for the judge to schedule a trial date. If the tenant doesn't appear in court, the landlord will be granted judgment in favor of the landlord at the hearing. This situation occurs with frequency in Virginia.

The **Right of Redemption** allows a tenant the option to pay the rent owed, and any late fees and attorney fees, up to two-days before the hearing. If the tenant does this the case is dismissed and will not be labeled as an eviction on the tenant's record. The tenant may use this process only once in each 12-month period.

Judges in Virginia frequently request both parties at the eviction proceeding to attempt to work out a compromise solution between themselves before the judge hears the case. The tenant may request the judge to have the case referred to the Eviction Diversion Pilot Program as well.

If the tenant does not have a defense that is allowed to be asserted by tenants in Virginia, the landlord will be granted a **Writ of Eviction (formally called Writ of Possession)**.

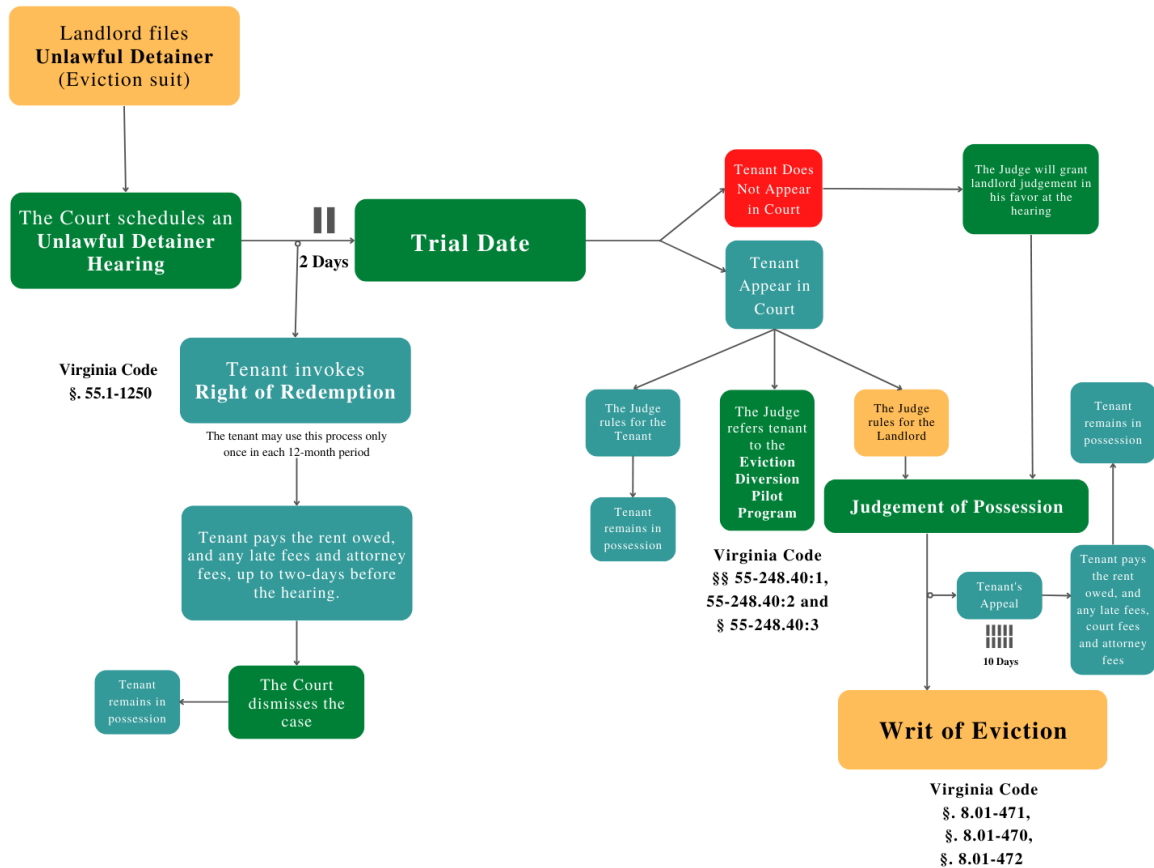


Figure 4: Steps leading to Judge Making an Eviction Determination: (Virginia Code §. 8.01 - 471, §. 8.01 - 470, §. 8.01 - 472) (Source: A Legislator’s Guide to Residential Eviction Legislation)

Steps Leading to a Sheriff Evicting the Tenant

Once the judge sends the **Writ of Eviction** to the Sheriff’s Office, it has 30 days to serve the tenant with this writ. The writ states that the tenant has 72 hours to remove oneself and one’s possessions from the rental property. There must be a 10-day period before the tenant has belongings set out of the rental property and the locks changed. This allows the tenant to file an appeal to the circuit court where the property is located.

The landlord must give 10 days-notice to the tenant that belongings left on the property will be disposed of if not removed by the time of eviction. The sheriff must remove the tenant and tenant’s property; the landlord may not do so on one’s own. If the landlord attempts to do so, it is illegal and called an unlawful ouster. Landlords may not have the utilities turned off as a means of eviction to force the tenant out of the property.

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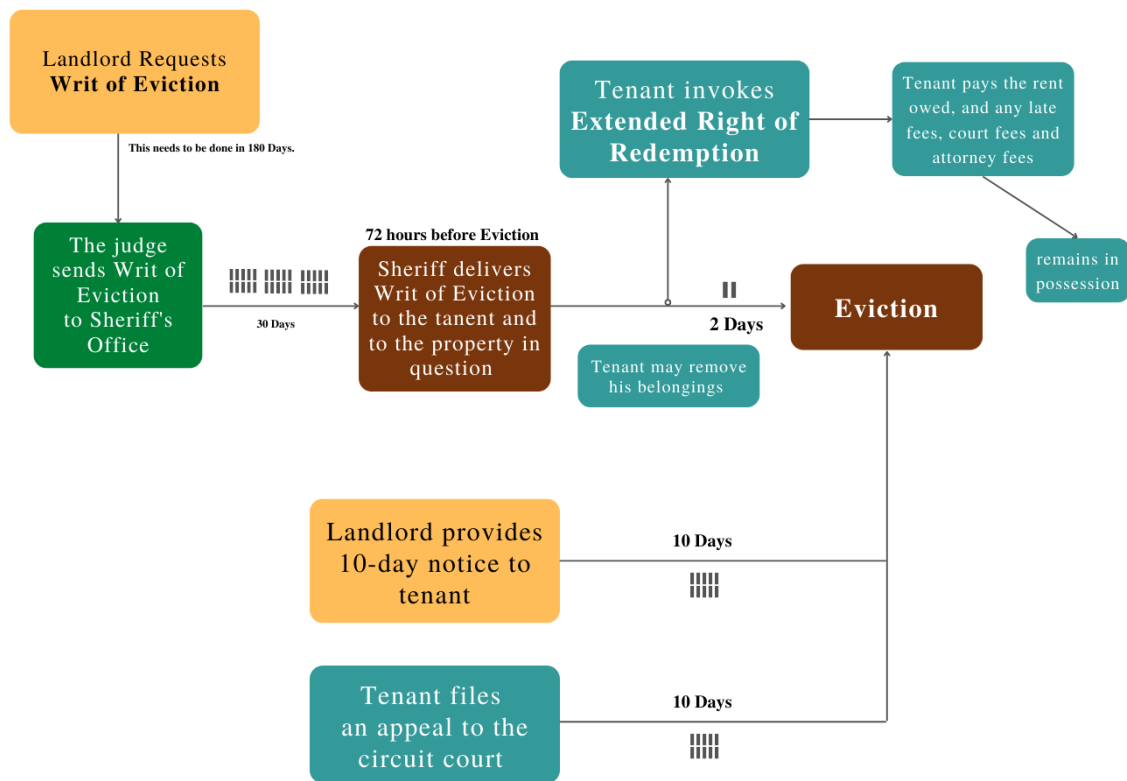


Figure 5: Steps leading to Eviction by Sheriff (Source: A Legislator’s Guide to Residential Eviction Legislation)

Legislative Changes to the Virginia’s Eviction Process

Besides the Eviction Diversion Pilot Program, legislation changes were made to alleviate evictions statewide. The Virginia Housing Commission assembled a special workgroup with membership from the apartment managers and owners, realtors, the Virginia Legal Aid Office, Poverty Law Center, and attorneys who work within the eviction process. A series of bills were recommended by the special work group and then to the full Commission for passage during the 2019 legislative session. The recommended series of bills became law, and several other pieces of legislation concerning the eviction process were introduced and passed in the 2020 legislative session. The changes are outlined below and are important because of their significance in the way the eviction process affects landlords and tenants in Virginia.

Legislative Changes to the Eviction Process

- **Written Leases (2020)**
Virginia Code §55.1-1204, Chapter 1231 of the Acts of Assembly
- **Writ of Eviction (2019)**
Virginia Code §8.01-470
- **Summons for Unlawful Detainer (2019)**
Virginia Code §8.01-126
- **Tenant's Right of Redemption (2019)**
Virginia Code §55.1-1250 (D)
- **Expungement of an Unlawful Detainer (2020)**
Chapter 1013 Act of Assembly
- **Appeal Bond (2022)**
Virginia Code §16.1-107
- **Eviction Diversion Program (2020)**
Virginia Code §§ 55-248.40:1, 55-248.40:2 and § 55-248.40:3

Figure 6: Legislative Changes to the Virginia's Eviction Process

- **Written Leases (2020):** Virginia Code [§55.1-1204](#), [Chapter 1231 of the Acts of Assembly](#)

Under § 55.1-1204(B), a landlord is required to offer a written rental agreement “containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord-tenant relationship.” If a landlord does not provide a written rental agreement, several default provisions will apply to the lease.

§§ 55.1-1204 and 55-1250 further amend this lease section. The landlord shall not charge a tenant a late fee unless it is part of the written rental agreement. Furthermore, the landlord shall not charge a late fee of more than 10% of the periodic rent or 10% of the remaining balance owed on the lease (whichever is the lesser amount owed).

- **Writ of Eviction (2019):** Virginia Code [§8.01-470](#)

This is formerly known as the “Writ of Possession.” With the new amendment, the Writ of Eviction became valid for 180 days from the date of judgement; this was previously a one-year period.

- **Summons for Unlawful Detainer (2019):** Virginia Code [§8.01-126](#)

In the previous law, the case shall be heard within "21 days after the initial return date or as soon as practicable." The law now requires the initial hearing to be held within 30 days and the landlord to file a Pay or Quit Notice with the court. This was previously done as a matter of practice but not specified in law.

- **Tenant's Right of Redemption (2019):** Virginia Code [§55.1-1250 \(D\)](#)

Previously, the tenant could pay all the amounts due, such as rent, late fees, court costs, and attorney fees, on or before the first court date to dismiss the Unlawful Detainer Case. With the new amendment, the tenant may pay all these amounts by cashier's check, a certified check, or with a money order up to two business days before the scheduled eviction.

- **Expungement of an Unlawful Detainer (2022):** Virginia Code [§8.01-130.01](#)

A tenant will be able to avoid being rejected on a lease application by having an unlawful detainer action that was previously dismissed or non-suited expunged from one's record.

- **Appeal Bond (2022):** Virginia Code [§16.1-107](#)

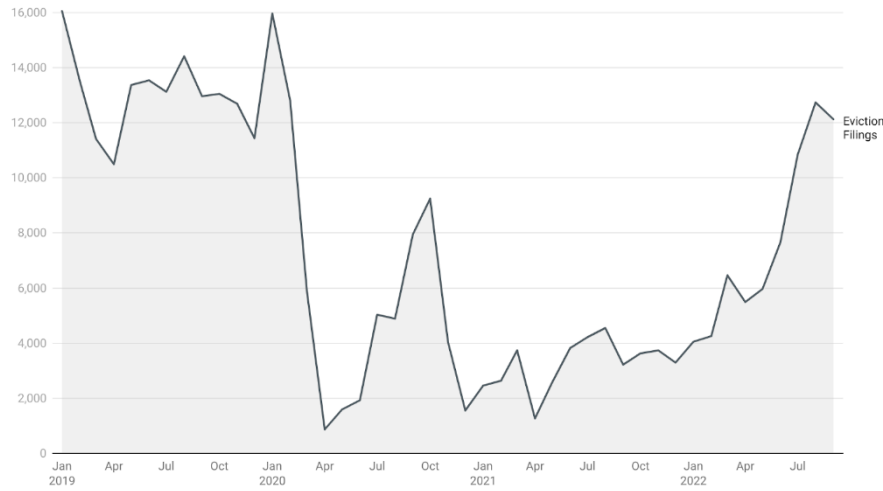
In the past, it was extremely difficult for a tenant to appeal eviction because the tenant needed to obtain an appeal bond that required up to six months' rent to be placed in an escrow account. Now the tenant's bond has been lowered to the amount of rent and fees determined by the unlawful detainer action in the General District Court. The tenant must, however, pay rent as it becomes due to the landlord while awaiting the appeal. Failure to do so may allow the Circuit Court to make a judgement for the landlord without a hearing.

Eviction Rate in Virginia

The eviction rate in Virginia is historically higher than the national average. Across the Commonwealth, almost half of the renter households are cost-burdened and pay more than 30 percent of their income for housing ([VCU Eviction](#)). Four in five renters below 50 percent of their Area Median Income are cost-burdened. This figure represents more than a quarter of a million households in Virginia, which continues to rise.

The following localities have higher eviction rates than the state average: Accomack County, Chesapeake, Chesterfield, Danville, Hampton, Henrico County, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Prince George County, Richmond, and Virginia Beach.

Monthly Eviction Filings in Virginia (2019-2022)



Source: Legal Services Corporation - Created with Datawrapper

Figure 7: Monthly Eviction Filing in Virginia between 2019 and 2022 (Source: [Legal Services Corporation Eviction Tracker](#))

Virginia Quarterly Eviction Counts, Q1 2019 - Q2 2022

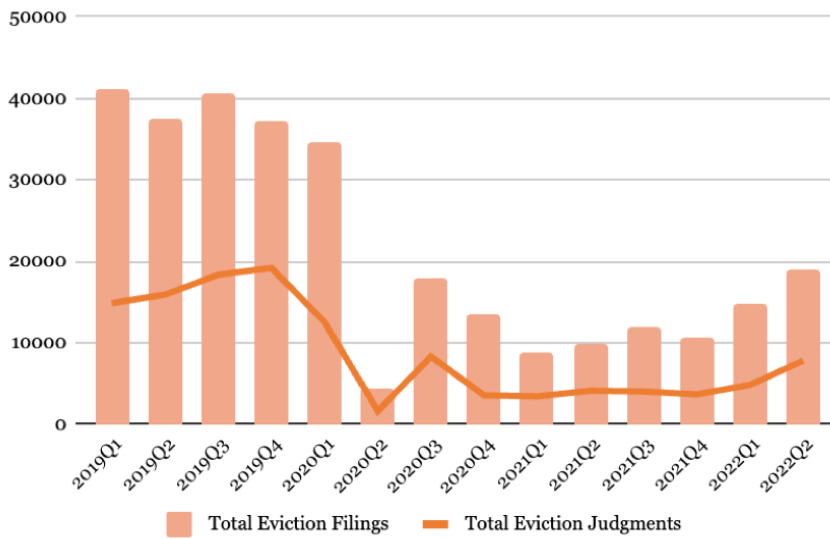


Figure 8: Virginia Quarterly Eviction Filings and Judgements between 2019 Q1 and 2022 Q2 (Source: [RVA Eviction Lab](#))

Other Eviction Reduction Programs in Virginia

Virginia Eviction Reduction Pilot

The Department of Housing and Community Development (DHCD) created the Virginia Eviction Reduction Pilot (VERP) Program as a post-pandemic eviction response. The Virginia Eviction Reduction Pilot Program was initiated to create a local/regional coordinated systems approach to effectively prevent evictions or divert cases from formal legal proceedings. This pilot program served 1,353 households across the four regions between 2021 and June 2022, with participants predominantly black, female, and those with children ([The Virginia Eviction Reduction Pilot Program: Final Report on Phase 1](#))

City of Richmond Eviction Diversion Program

In 2019, the City of Richmond, in partnership with the nonprofit Housing Opportunities Made Equal (HOME) and the Greater Richmond Bar Foundation, created the Eviction Diversion Program. The program worked in the courthouse to mediate between tenants and landlords and develop court-monitored payment plans. This program ran from October 1, 2019 to June 30, 2020, and is only available to the residents of Richmond and landlords owning properties in Richmond ([Eviction Innovation](#)).

Comparative State Analysis: Review of Statues, Regulation and Data

This section examines eviction diversion programs in other states which aim to reduce filings and evictions and enhance housing stability. Some states introduced or adopted eviction diversion programs to prevent evictions from reaching the courts or divert existing cases from formal legal proceedings. Most eviction diversion programs offer a combination of legal assistance, mediation, housing counseling, rental assistance, negotiated settlements, social or behavioral health services, and/or other alternatives to formal eviction hearings ([Urban Institute](#); [NCSC](#)). Eviction diversion programs can be set up pre- or post-court filing, and may be formally or informally offered in coordination with state or local governments, nonprofit organizations, law school clinics, or courts. The American Bar Association identified the following services that might constitute Eviction Diversion programs.

Full or limited legal representation

- Pre-filing and/or post-filing mediation/conciliation
- Rental or cash assistance
- Relocation assistance
- Credit protection services
- Sealing or expunging eviction records
- Non-legal tenant advocacy
- Community housing court
- Legal hotline or helpdesk
- Tenant rights and/or education programs. ([American Bar Association](#))

As we examine Eviction Diversion Programs in other states, we consider these two main components: whether the program is court-based or posted/pre-COVID.

Court-based Programs

In Court-based interventions, services or resources are offered by court personnel such as (i.e., help desk and court mediators) or on-site at the courthouse (i.e., volunteer mediators, clinic law students, and/or lawyers for the day programs). These include services initiated by the court offered in conjunction with state or local government agencies or nonprofit organizations ([American Bar](#), pg- 5). The National Center for State Court identifies strong community partnerships, written and electronic communications, and more navigable and streamlined procedures as crucial elements of successful court-based programs.

Post-Covid Programs

Federal, state, and local governments enacted eviction moratoria to mitigate the spread of COVID-19 and ensure people remained housed during the pandemic. Many eviction prevention and/or diversion efforts were initiated or formalized due to the economic consequences of the pandemic. Most states and localities adopted temporary eviction moratoria to help keep people in their homes through the pandemic. With the federal moratorium (CARES Act; CDC Eviction Moratorium) and the vast majority of state-level eviction moratoria having expired or been lifted, our analysis will focus on the eviction diversion programs that were not affiliated or linked with the pandemic.

Features of the Program

The [National Center for State Court](#) identified three broad types of Diversion Eviction Programs based on its features: Light Eviction Diversion, Medium Eviction Diversion And Full Eviction Diversion. In a light eviction diversion program, the court provides information about optional pre-filing resources including legal aid, mediation, and rental assistance. Landlords and tenants are encouraged to consider alternatives to litigation before moving forward with filing a case. In a medium eviction diversion model, the court provides for eviction diversion through a general administrative order, but without a mandatory case management/pre-trial status hearing at the beginning of the case. For Full Eviction Diversion, the judicial officer may refer the case directly to eviction diversion and postpone issuing a final judgement until the parties have been able to fully take advantage of the available program resources, including applying for rental assistance.

Unsuccessful Legislation

[HB 818](#)

Georgia

This bill is to amend Chapter 7 of Title 44 of the Official Code of Georgia to establish a Residential Eviction Diversion Program. This program provides tenants with a right to request to participate in a residential eviction diversion program within seven days following receipt of notice for dispossession procedures. Tenants shall also request to schedule a mediation with the program no later than seven days after receiving a demand for possession. Landlord participation is also required in this program.

[S 101](#)

Delaware

This bill is to amend Title 25 of the Delaware Code relating to the Residential Landlord-Tenant Code. This bill creates a right to representation in eviction proceedings for individuals making up to 200% Federal Poverty Level. This bill authorizes creation of a Residential Eviction Diversion program to facilitate a pre-eviction dispute resolution between landlords and tenants for rental agreement violations or non-payment of rent. The Justice of Peace Court or the Court's designee shall appoint a HUD-certified housing counselor or other representatives to tenants who participated in the conciliation conference.

[H 3287/S 3445](#)

Minnesota

This bill is to establish a stable housing mediation grant program to provide, among other services, eviction prevention services, including access to mediation services that prevent eviction court costs and reduce negative consequences to families, schools, employers, neighborhoods, and communities.

Pending Legislation

[H 5309](#)

Rhode Island

This bill is to amend Chapter 34-18 of the General Laws entitled "Residential Landlord and Tenant Act" and to establish an eviction diversion mediation program in the appropriate housing court. The program shall consist of a conciliation conference between a landlord and tenant and a designated housing mediator that participates in the conciliation conference. The housing mediators are responsible for the initial screening and evaluation of cases, investigating, and recommending settlement.

[H 330](#)

Pennsylvania

This bill is to amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes in the organization and jurisdiction of courts of common pleas, further providing for housing courts. The bill creates an Eviction Diversion Mediation program within the housing courts to offer a conciliation conference between landlords and tenants conducted by designated housing mediators.

Successful Legislation

[S 5160](#)

Washington

This was enacted by the General Assembly of Washington in the 2021 Regular Session. This act addresses landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs. It requires the administrative office of the courts to contract with dispute resolution centers within or serving each county to establish a court-based eviction resolution pilot program to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action (Wilson et al., 2022).

[S 485](#)

Maine

This was enacted by the General Assembly of Maine in the 2021 Regular Session. This act requires specified notices to be attached to such summons, including a statement that either party may request mediation on any issue and a court-approved form to request mediation (Wilson et al., 2022).

[H1214](#)

Indiana

This was enacted by the General Assembly of Indiana in 2022 to amend the Indiana Code concerning the property. It requires the plaintiff in a residential eviction action to file a motion to dismiss the action if the case is resolved between the parties at any time before final adjudication unless the plaintiff is seeking damages.

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