

THE BASICS OF EVICTION AND FORECLOSURE LAW

The laws regarding eviction or foreclosure
during the pandemic

A series of several parallel white lines of varying thicknesses, slanted diagonally from the bottom left towards the top right, crossing the right side of the slide.

YOUR PRESENTER

Ann H. Kloeckner, Esq., Executive Director

Legal Aid Works[®]

www.legalaidworks.org

A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, set against a blue gradient background.

- ▶ **The process of eviction vs. the process of foreclosure**
- ▶ **Timeline of an eviction/foreclosure**
- ▶ **How has COVID-19 changed the typical eviction/foreclosure timeline?**
- ▶ **The right of redemption**
- ▶ **Get that agreement with the landlord in writing**
- ▶ **Triage tips and helpful resources**

TOPICS COVERED TODAY

- ▶ **Landlords must take a tenant to court. No “self-help” evictions.**

THE EVICTION PROCESS

- ▶ Previously, a landlord had to give the tenant a written notice, called a “5-day pay or quit”, giving the tenant five days to pay all the money owed or the eviction court process would start.
- ▶ That time frame has now changed to 14 days.
- ▶ Rent collection efforts now must come first, with eviction lawsuits for nonpayment of rent only as a final resort.

THE EVICTION PROCESS

- ▶ Large landlords (owning five or more rental units) must follow an extra rule:
- ▶ They must offer their tenants a payment plan to bring the account to zero balance within six months, or the remaining term of the lease, whichever is less.
- ▶ The payment plan may not include late fees, only rent.

THE EVICTION PROCESS

- ▶ Starting on January 1, 2021, all landlords seeking eviction due to unpaid rent now have an additional requirement. During the 14-day nonpayment notice period, these landlords must apply for rent relief on behalf of the tenant unless the tenant has already applied.
- ▶ These landlords may not evict unless rent relief is denied for one of these reasons:
 - ▶ The tenant refuses to cooperate with or apply for rent relief
 - ▶ The tenant is denied rent relief
 - ▶ Rent relief program has run out of money.
 - ▶ Rent relief is not approved within 45 days after submission of the application.

In short, rent collection efforts must come first, with eviction lawsuits for nonpayment of rent only as a final resort.

THE EVICTION PROCESS

- ▶ Landlords may not evict unless the tenant refuses to enter a payment plan or enters one and fails to make a payment within 14 days of the due date. Even then, a landlord must send another 14-day notice about the missed payment before filing an eviction lawsuit.

THE EVICTION PROCESS

- ▶ If the tenant does not pay the rent within the fourteen days demanded by the landlord, the landlord can file a complaint in General District Court.
- ▶ The process is called an “Unlawful Detainer” case.
- ▶ The tenant finds out about it through a “summons” which summons the tenant to court on a specific date and time.

THE EVICTION PROCESS

- ▶ The first court date is called “the first return date”. It typically is scheduled for a few weeks after the landlord files the unlawful detainer complaint.
- ▶ The tenant should show up at the first return date. Tenants who don’t show up will likely have a default order entered against them on the first return date, and will likely be evicted.
- ▶ This court date is sometimes the first time when a tenant finds out exactly what the landlord claims is owed (back rent, court costs, attorneys fees, interest fees, etc.).

THE EVICTION PROCESS

- ▶ If the tenant does not agree about the amount owed to the landlord, he or she can request that the case be set for a hearing date a few weeks later, at which evidence can be presented about what payments were already made and what is actually owed.

THE EVICTION PROCESS

- ▶ **The General District Court judge can issue an order of eviction at either the first return date or the final hearing date.**
- ▶ **After that order is entered, the tenant has ten days to file an appeal with the Circuit Court.**
- ▶ **To file that appeal, tenants must file an appeal bond, usually the amount that the court has ordered the tenant to pay.**

THE EVICTION PROCESS

- ▶ After the ten-day period to file an appeal has passed, the sheriff can issue an order of possession, giving the tenant 72 hours to leave.
- ▶ After the 72 hours have passed, the sheriff may come and physically evict the tenant.
- ▶ A landlord can ask the court to immediately issue the writ of eviction, wait the 10 days, and then get the tenant out right away after the 10 days have passed.

THE EVICTION PROCESS

- ▶ From the time that rent is due (on the first of the month, for example) to the date when the sheriff comes to kick the tenant out after a judge legally evicts a tenant, about a month or more could go by.

THE EVICTION PROCESS TIMELINE

- ▶ Tenants can possibly “redeem” their tenancy once every twelve months by paying everything owed (back rent, attorneys fees, court costs, interest fees) within two business days of the sheriff’s order of possession (approximately twelve days after the judge has issued an order of eviction).
- ▶ NOTE: a new law has just been passed that would allow a renter to redeem a tenancy any time during the tenancy.

THE RIGHT OF REDEMPTION

- ▶ **The eviction timeline is altered during the pandemic in several important ways.**

**THE EVICTION TIMELINE DURING THE
PANDEMIC**

- ▶ Under the federal CARES Act enacted on March 27th, all evictions were stopped until July 25th if the landlord held a mortgage that is “federally backed”.
- ▶ Examples of “federally backed”: Fannie Mae, Freddie Mac, HUD, Veterans Administration, Department of Agriculture, Section 8
- ▶ On July 25th, the landlord then had to give the tenant thirty days notice of intent to evict. That means an eviction case could not be filed until August 25th for any landlord with a federally backed mortgage.

THE EVICTION TIMELINE DURING THE PANDEMIC

- ▶ The second possible way the pandemic has altered the eviction timeline is as a result of a Virginia law that was passed in April of 2020.
- ▶ Any tenant can ask for a 60 day continuance (postponement) of the eviction court date.

THE EVICTION TIMELINE DURING THE
PANDEMIC

- ▶ **To qualify for this postponement, the tenant must**
 - a. **Show up at court on the first return date.**
 - b. **With written proof that the tenant's income has been affected by the COVID-19 pandemic (furloughed, laid off, reduced hours, caring for a COVID-19 patient, etc.)**

**THE EVICTION TIMELINE DURING THE
PANDEMIC**

- ▶ On September 1, the CDC issued an eviction moratorium to protect health and stop the spread of the COVID-19 virus.
- ▶ Effective September 4, if a tenant signs a declaration and presents it to the landlord, there can be no eviction until after December 31, 2020. That eviction moratorium has now been extended to at least March 31st, 2021.
- ▶ For a copy of the required declaration, see <https://www.allianceforhousingjustice.org/understand-cdc-eviction-moratorium>
- ▶ Must be low income, tried to get government rental assistance funds, would be homeless if evicted, and agree to make partial payments if possible.
- ▶ All adults in the household need to sign a separate declaration.

THE CDC'S EVICTION MORATORIUM

- ▶ **Get all agreements in writing**
- ▶ **Specifically require that the landlord agrees to formally drop the current eviction proceedings in exchange for receiving X amount of money at a specific date and time.**

**WHEN NEGOTIATING WITH THE
LANDLORD**

FORECLOSURE PROCESS IN VIRGINIA



- ▶ Unlike evictions, which in Virginia must be accomplished through a court case, a homeowner can be foreclosed upon by the mortgage lender without any court hearing at all.
- ▶ Virginia is a “non-judicial” foreclosure state, meaning that a lender can foreclose on a homeowner’s property simply by sending a notice 14 days before the foreclosure sale date.

BIGGEST DIFFERENCE BETWEEN EVICTION
PROCESS AND FORECLOSURE PROCESS

- ▶ **A new law that has just passed the General Assembly has extended the 14-day time frame for a foreclosure notice to 60 days.**

NEW LAW JUST PASSED

- ▶ A homeowner must pay the full amount owed (along with any fees that are outlined in their deed of trust) before the foreclosure sale date.
- ▶ Hey, homeowner, where's your deed of trust? Find it and read it to learn the rules of the game.

HOW CAN A FORECLOSURE BE PREVENTED?

- ▶ Under the federal CARES Act passed on March 27, 2020, a homeowner who has a federally backed mortgage can request “forbearance” of the mortgage for up to 180 days, and can apply for an additional 180 days, if there is proof of loss of income due to the pandemic.

HOW HAS THE FORECLOSURE TIMELINE
BEEN AFFECTED BY THE PANDEMIC?

- ▶ **Just like with negotiating with a landlord, it is important for all agreements with mortgage lenders to be in writing, with an express clause that says the lender will drop the foreclosure in exchange for receiving X amount of money by Y date.**

GET IT IN WRITING!

▶ **SHOW UP TO COURT**

BEST ADVICE: SHOW UP!

A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

- ▶ Refer the tenant/homeowner to Legal Aid Works® for intake.
- ▶ We will assess income eligibility and conflict of interest. If the applicant is eligible, we can give some advice or representation.
- ▶ Never guarantee that we can help them. Instead, say, “This organization might be able to help you.”
- ▶ To access intake, call housing paralegal Jean at 540-371-1105, ext. 124.

REFER TO LEGAL AID WORKS®

- ▶ Virginia Poverty Law Center www.vplc.org
- ▶ Legal Aid Works® www.legalaidworks.org
(click on Resources Tab)
 - a. Housing Guide (Virginia laws affecting tenants and a listing of affordable housing in our community)
 - b. Redemption fact sheet
 - c. CARES Act fact sheet
 - d. Rent and Mortgage Relief Fund:
<https://dmz1.dhcd.virginia.gov/RMRPEligibility>

HELPFUL RESOURCES

THANK YOU!

