

Recommmended Legislative Priorities

1. Warranty of Habitability: Many states have a warranty of habitability, like merchants have an implied warranty of merchantability. To enforce the warranty of habitability, a tenant need not be current in rent nor have provided written notice to the landlord. In a non-payment of rent case, if the tenant proves the housing conditions entitle her to a rent abatement (a rent credit) equal to or greater than the unpaid rent, the tenant gets to stay.

2. Require Filing of the Termination Notice with the Unlawful Detainer: Some court clerks already require this as a local informal procedure. It is not standard nor required everywhere. The landlord's right to possession depends on a proper lease termination. In turn, this depends on a proper termination notice. Filing this notice with the unlawful detainer, and having the notice served on the tenant with the unlawful detainer, should be required.

3. Require Filing of Statement of Tenant Rights and Responsibilities with the Unlawful Detainer: Starting July 1, 2020, landlords must offer tenants entering new or renewed leases, a Statement of Tenant Rights and Responsibilities. This must be signed by both landlord and tenant. <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/statement-of-tenant-rights-and-responsibilities-english.pdf>. A landlord may not sue a tenant in any court for any reason unless this statement has been signed. Filing this Statement with the unlawful detainer, and having the Statement served on the tenant with the unlawful detainer, should be required.

4. Certificate of Compliance: If a landlord sues a tenant for breaching the lease due to non-payment of rent, the landlord should be required to certify that the landlord has not breached the lease, has not been cited for building code violations, and has not failed to provide fit and habitable housing. Landlords currently must certify they provided the tenant all required notices before taking a tenant to court. They also should certify they have not breached the lease.

5. One Unlawful Detainer at a Time: As each month's rent becomes due and the tenant remains behind, some landlords file subsequent unlawful detainers while the first case remains pending. This results in multiple court costs and attorney's fees. The tenant must pay these to stay. A 2019 change to Code of Virginia §8.01-126 failed to fix this problem. It still gave landlords the option of amending upward or filing a lawsuit for each month. This still results in multiple court costs and attorney's fees. This problem remains to be fixed.

6. Increase the Court Filing Fee for an Unlawful Detainer: Virginia has one of the lowest filing fees in the nation for an eviction lawsuit, around \$64. By contrast, the filing fee in North Carolina is around \$126 and in Alabama is about \$250. Data from Princeton's Eviction Lab shows the filing fee cost directly correlates with the time between non-payment of rent and an eviction filing. The lower the filing fee, the sooner the eviction is filed. Increasing the filing fee would incentivize landlords to do payment plans first, rather than filing an eviction lawsuit.

7. Use Plain English Court Forms: The current Summons for Unlawful Detainer (Form DC-421) is intimidating and inscrutable. Using the words "summons" and "unlawful" imply the tenant committed a crime. The form is disjointed. It presents important information in a confusing,

hard-to-read, three column, landscape layout. A much simpler form, in portrait layout, would be far easier for tenants to understand.

8. Provide Notice of Prohibited Items: Most General District Courts prohibit cell phones and other electronics in the courthouse. Notice of this prohibition is not provided in the court papers served on the tenant. Few GDC websites mention the prohibition. This lack of knowledge causes some tenants to be late, miss their court date, and have a default judgment against them. Notice in the court papers served, and on the website should be required.

9. Rent means Rent, and not other Charges: Under Code of Virginia §55.1-1200, rent means all money, other than a security deposit, owed to the landlord under the lease. A tenant who legitimately disputes a charge other than rent and loses in court may be unable to appeal because an appeal bond is required in all cases involving the recovering of “rent.” A landlord’s charge for something other than the right to occupy is not rent. It should not be treated as such.

10. Motel Occupancy Greater than 30 Days should be a Tenancy: Residents of motels for less than 90 days are not considered tenants. They have almost none of the protections given to tenants. Residents in motels for more than 30 days are more like tenants than like vacation guests. They should have the legal protections of tenants. The shortage of affordable housing is another reason why these residents should have tenant protections.

11. Require an Accounting of the Redemption Amount on the Writ of Eviction: A 2019 change to Code of Virginia §55.1-1250(D) gave tenants an extended right of redemption (pay and stay). The tenant can pay all amounts owed as of two business days before the Sheriff’s scheduled eviction. If so, the Sheriff’s eviction is cancelled. However, the Writ of Eviction does not say the amount needed to pay to zero balance and redeem. A Garnishment Summons (Form DC-451) has an accounting of the amount a debtor needs to pay due to a judgment. The same information should be provided showing how much a tenant needs to pay to avoid eviction.

12. Require Mutuality of Attorney’s Fees: Landlords can and do use the threat of attorney’s fees as a means of pressuring tenants to move. In almost all cases, tenants have no countervailing threat of attorney’s fees to use against landlords. In any situation (contract or statute) where the landlord can recover attorney’s fees if the landlord wins, the tenant should recover attorney’s fees if the landlord loses.

13. Hold Landlords Liable in Tort: Even if landlords do not fulfill their duties under Virginia law, they are liable only for breach of contract. They are not liable in tort. See, *Isbell v. Commercial Inv. Assocs.*, 273 Va. 605, 644 S.E.2d 72 (2007) (tenant injured by caved in ceiling), and *Steward v. Holland Family Properties*, 284 Va. 282, 726 S.E.2d 251 (2012) (tenant’s child harmed by lead paint). This shield for landlords’ irresponsible conduct is indefensible.

14. Strengthen Prohibition against Retaliatory Eviction: Virginia law has a prohibition against retaliatory eviction. Proving it is next to impossible. In addition, judges generally will not apply retaliatory eviction to the landlord’s refusal to renew a lease. Other states presume that an eviction brought within a certain period (*e.g.*, 6 months) after the tenant asserts rights is retaliatory. This presumption should apply to a refusal to renew as well.

15. Require a Security Deposit to be Held Separately: A security deposit is and remains the tenant's property, unless properly claimed by the landlord after the tenant vacates. The landlord is a trustee of the tenant's security deposit. The landlord also has fiduciary responsibilities for those funds. The landlord should not commingle the tenant's money with the landlord's money. The landlord should be required to hold the tenant's funds in a separate escrow account.

16. Cover all Landlord Tenant Transactions under the VCPA: The Virginia Consumer Protections Act (VCPA) excludes from its coverage any aspect of a consumer transaction subject to landlord-tenant law, unless the act or practice of a landlord is a misrepresentation or fraudulent act or practice. There is no rational basis for this exclusion, for example, to exclude coverage for a landlord's false advertising or for a landlord using a penalty clause.

17. Establish a Remedy when the Premises are Condemned: Under existing law, if the rental premises are condemned, the tenant must vacate immediately. The tenant is entitled only to the return of unearned rent and the security deposit. The premises did not fall into such disrepair overnight. Instead, the premises must have been deteriorating for months. There should be a rebuttable presumption that the tenant is entitled to a refund of the last three months of rent.

National Law Housing Project ([Transition-Evictions.pdf \(nhlp.org\)](https://www.nhlp.org))

Create a national eviction database. Currently, there is no federal system in place to measure the extent of the eviction crisis nationwide and standardize the data collected. The Eviction Lab, a Princeton University database, has clearly shown that the U.S. has an eviction crisis, but it has also demonstrated that the federal government needs to establish a national data collection effort to understand fully the scope of the problem. Comprehensive data collection will help us combat the devastating effects of eviction on families, create more responsive policies, and understand more fully how the eviction crisis disproportionately impacts BIPOC, people with disabilities, and formerly incarcerated individuals.

Ensure right to counsel for tenants in eviction cases. While 90 percent of owners or landlords have representation in eviction court, only 10 percent of tenants do. Providing tenants with counsel reduces the number of evictions completed, mitigates the harm of eviction on households, and reduces the burden on community systems.

Improve oversight of tenant screening practices. Currently, tenant screening is an unregulated industry and more and more landlords are farming out their decisions about who is eligible to lease a unit. Tenant screening and consumer reporting agencies should be subject to federal regulation and should be required to do the following: Provide consumers with tenant screening reports when they are requested as part of a rental application process or upon denial of housing, so tenants can contest and correct inaccurate or incomplete information. Tenants should also have access to the landlord's admission policy and any additional background reports the landlord uses. Exclude eviction records of cases that were dismissed by the court or that were decided in favor of the tenant as grounds for denial. Additionally, landlords should be required to

conduct individualized reviews of applications denied for evictions records similar to the requirement for applicants rejected due to criminal history.

Rent Gouging Laws the premise is that you can't increase rent on a year-over-year basis more than XX% (let's call it 15%) unless there are significant renovations to the unit (i.e. upgraded utilities etc.).

Include Bare Minimum Livable Standards in Virginia Uniform Statewide Building Code

Livable building standards are currently included in the [Virginia Residential Landlord and Tenant Act](#) (“the Act”) instead of in [Virginia Uniform Statewide Building Code](#) (“Code”). Basic living standards that were broken at The Serrano include significant mold presence, rodent infestation, and other utility grievances. Not having these standards included in code is a problem for multiple reasons.

To prove a violation of the Act a tenant must hire a professional expert to attest to these standards being violated in court after attaining a lawyer. Hiring a professional expert is a significant expense even if you are a low income resident that would qualify for free legal counsel from [Legal Services of Northern Virginia](#). If these basic standards were included in Code a county inspector would be able to require correction of the violation or issue an abatement order and/or write a letter of attestation for use in court. These options aren't currently available since it is not required by code.

For example, [DC Housing Code](#) requires rental dwellings: be free of insects and rodents, have A/C that is 15 degrees less than outside, have heating equipment that heats to 68 degrees, water temperature that can reach 110 degrees, paint that is not flaking, removal of lead paint, mold removal, no plumbing leaks, among other things.

Strengthen Prohibition Against Retaliatory Eviction

One of the most heartbreaking [stories we heard on the most recent Tenant-Landlord Commission call was the stories of retaliatory actions](#) by AHC's property management team. This made some scared to bring up problems in fear of retaliatory action that could lead them to being evicted.

Technically Virginia law has a prohibition against retaliatory eviction but proving it is next to impossible. Judges generally will not apply retaliatory eviction to the landlord's refusal to renew a lease. Other states presume that an eviction brought within a certain period (*e.g.*, 6 months) after the tenant asserts rights is retaliatory. This presumption should apply to a refusal to renew as well.

Warranty of Habitability

Many states have a warranty of habitability for items such as heat and running water. To enforce the warranty of habitability, a tenant need not be current in rent nor have provided written notice to the landlord. In a non-payment of rent case, if the tenant proves the housing conditions entitle

them to a rent abatement (a rent credit) equal to or greater than the unpaid rent, the tenant gets to stay.

Remedy When Premises are Condemned

Under existing law, if the rental premises are condemned, the tenant must vacate immediately. The tenant is entitled only to the return of unearned rent and the security deposit. The premises did not fall into such disrepair overnight. Instead, the premises must have been deteriorating for months. There should be a rebuttable presumption that the tenant is entitled to a refund of the last three months of rent.

Policy Recommendations to Assist Thrive Clients

Based on the preliminary research findings in this brief, the following policy recommendations would assist Thrive clients, and Arlington's most vulnerable residents.

1. Right to Counsel Laws

Considerable precursors to eviction are the lack of legal representation and the lack of understanding of tenants' legal rights. As legal representation has been shown to be effective in eviction prevention,ⁱ Arlington Thrive should advocate for policy that guarantees counsel to be present in eviction proceedings.

New York City, Cleveland, Newark, Philadelphia, and San Francisco currently have "right to counsel" laws in place, which guarantee an attorney would accompany low-income tenants to eviction proceedings.

2. Extend the 5 Day "Pay-or-Quit Notice" to 15 Days (or longer)

Virginia law states that a Landlord must allow their tenants 5 days to pay the full amount of past-due rent before filing an eviction lawsuit against themⁱⁱ. Virginia Covid-related eviction protections included that in the state of Virginia, the 5 day period was to be extended to 15 days. This extension is set to expire on June 30, 2021.

To assist Thrive clients by providing them with more time to pay their past due rent, Thrive should advocate for policy that would permanently require landlords to wait 15 days or longer before filing an eviction notice could decrease evictions.

3. Landlord-Tenant Mediation

Mediation between landlords and tenants has been shown to reduce evictionsⁱⁱⁱ.

While Virginia courts do have mediation programs for landlord-tenant cases, and some landlords do seek private mediators before filing evictions, there is no law that requires mediation prior to evicting a tenant. Policy that promotes mediation before filing for eviction could be very effective in keeping Arlington residents housed. Thrive should advocate for such a policy as part of our eviction prevention methods.

4. Increase of Wages in Arlington

Arlington residents have experienced an increase in average rent in Arlington by 26% percent between 2010 to 2019,^{iv} and rents have increased faster than the median income of Arlington residents, causing difficulty for low wage earners to keep up with rent increases.^{v, vi} Additionally, Thrive clients have reported an inability to keep current on rent payments, even when employed, due to low-wage paying jobs.

Thrive should advocate for policy that increases minimum wage to a living wage, which has been calculated in some areas of Virginia to be more than 2x the recorded minimum wage earnings.^{vii}

5. Prevent Reporting Evictions or Late Rent Payments to Credit Reporting Agencies

Credit scores can suffer and chances of being approved to rent another apartment can decline if an eviction is on a tenant's record.^{viii, ix} While Thrive clients have been saved from eviction, evictions have continued for many of Arlington's most vulnerable residents.^x

Virginia residents were protected from having late rent payments reported to credit bureaus' while enrolled in a payment plan under the state's Rent relief protections (RRP)^{xi}, but when RRP expires, this will expire. Thrive should advocate for policy that prevents Landlords from reporting late rent payments to credit reporting agencies.

6. Sharing Information with Tenants

A lack of information for renters is another large driver of evictions. While eviction protections were in place, landlords were required to notify tenants of all available financial assistance options. If this requirement expires with all other eviction protections, Thrive should advocate for policy that requires landlords to inform tenants of financial assistance programs, to better assist them with avoiding eviction.

ⁱ <https://www.arlnow.com/2020/07/20/making-room-how-arlington-can-diffuse-the-eviction-time-bomb/>

ⁱⁱ <https://law.lis.virginia.gov/vacode/title55.1/chapter12/section55.1-1245/>

ⁱⁱⁱ <https://citymonitor.ai/housing/what-is-eviction-mediation>

^{iv} Arlington Missing Middle Housing Study

https://arlingtonva.konveio.com/missingmiddle?mc_cid=d5c15e55ac&mc_eid=3f38b315f7

^v Arlington Affordable Housing Study FAQs

<https://housing.arlingtonva.us/wp-content/uploads/sites/15/2015/04/Housing-Study-TK-FAQs.pdf>

^{vi} <https://housing.arlingtonva.us/income-rent-limits/>

^{vii} <https://livingwage.mit.edu/counties/51760>

^{viii} <https://www.arlnow.com/2020/07/20/making-room-how-arlington-can-diffuse-the-eviction-time-bomb/>

^{ix} <https://www.vox.com/22429430/renters-rent-relief-eviction-moratorium-housing-market>

^x <https://app.powerbi.com/view?r=eyJrjoiYWJkZDJJZTA0ODQ0OS00ZmEwLWE1MDQ0ODg0Y2NINTE5ZGU1IiwidCI6IjgwMzU0OD-A0LTFmZGYtNDI4ZS05ZjVmLTUwOTFIOTk0Y2Y1NCIsImMiOiJF9&pageName=ReportSectionea5033ef2cc6e60bcb7b>

^{xi} <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/tenant-after.pdf>

Criminal History Tenancy Screening

Summary

This legislative proposal enacts protections for residents with criminal history to support their successful reentry into society by mandating the extent to which criminal history can be considered by landlords and property owners to determine suitability as a tenant.

Details

- This proposal would prohibit landlords and property owners from considering records of arrests, charges, expunged convictions, convictions reversed on appeal, vacated convictions, offenses where adjudication was withheld or deferred, pardoned convictions, sealed juvenile records, misdemeanors, and parole or probation status when considering an applicant for a residential tenancy consistent with the Virginia Attorney General's 2021 Model Policy for Tenant Screening.
- The proposal would permit landlords and property owners to consider limited criminal history information following a candidate's successful income/credit screening for felony convictions in the last 5 years for:
 - Property offenses such as theft, burglary, vandalism, arson, and criminal damage to property.
 - Major drug offenses such as drug trafficking and the sale, smuggling, manufacture, or distribution of any controlled substance. This includes unspecified controlled substances. It also includes all 1st or 2nd degree controlled substance offenses. Major drug offenses do not include simple possession of a controlled substance or drug paraphernalia, nor any past conduct that has since been decriminalized.
 - Fraud offenses such as identity theft, use of stolen/writing bad checks, counterfeiting, and forgery.
 - Major violent offenses such as assault, battery, and homicide.
 - Sex offenses such as rape, registration as a sexual offender, taking indecent liberties with a minor, pandering, sex trafficking, and sexual battery. Not permitted are victimless crimes such as prostitution or solicitation.

Need and Supporting Evidence

- Residents with criminal history often face insurmountable obstacles to successful reentry into society including limited or no access to adequate housing.
- Protecting housing rights for residents with criminal history is associated with decreased recidivism, reduced homelessness, and less discrimination against minorities who are a disproportionate share of those incarcerated.¹
- A resident's housing outcomes are not significantly affected by prior misdemeanor offenses after two years and prior felonies after five years.²
- Localities across the United States have enacted legislation to reduce or eliminate housing discrimination against residents with criminal records, including Seattle, Washington and Washington, D.C.
- Ensuring that residents with criminal history who pose little or no risk of being unsuitable tenants can find housing in the private market will reduce the financial and social burden on nonprofits and public agencies sheltering these residents.

¹ Harvard Law Review. (2018, April 10). *Seattle, Wash., Ordinance 125393 Seattle Bans the Use of Criminal History in Rental Decisions*. Retrieved June 26, 2018, from <https://harvardlawreview.org/2018/04/seattle-wash-ordinance-125393>

² Warren, C. (2019). *Success in Housing: How Much Does Criminal Background Matter?* Retrieved July 17, 2021 from https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf