

Comparative Law and Policy Analysis for Addressing Evictions in Richmond, Virginia



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October 2019

Introduction

The City of Richmond has the second highest eviction rate of all large U.S. cities (Eviction Lab, 2016). Since the publication of a *New York Times* article in 2018, the community has been compelled to face the eviction crisis head-on (Badger & Bui, 2018). Understanding laws and policies that other states and localities have enacted to reduce eviction serves to inform community leaders in Virginia of potential remedies to this crisis. The following brief analysis describes several laws and policies applied across the country that seek to address eviction at various stages in the process. Demonstrating the multiple entry points for intervention, these policies can be divided into three groups:

- Decreasing evictions by providing additional protections for tenants before and during eviction processes;
- Lessening the severity of evictions by mitigating the impact of evictions on health, future housing and job or educational stability; and
- Curbing eviction through housing policy by expanding access to safe and affordable rental housing.

(For more detailed information and specific jurisdiction examples, please see the appendix and supplemental chart of policies and practices.)

Decreasing evictions

Eviction protection measures are often written into a state's or local jurisdiction's landlord-tenant law or housing codes. These laws may contain multiple anti-eviction policies, since they work in conjunction to promote stable tenancy. All of the following laws and policies are currently absent or only partially enacted in Richmond. These laws address the relationships between tenants and landlords and can reduce the incidence of evictions.

Just Cause Evictions

A just cause or good cause ordinance is a common measure to protect tenants from eviction. Just cause eviction ordinances delineate legal reasons for which a landlord can evict a tenant, such as failure to pay rent, breach of the rental contract, or removal of the property from the rental market. Just cause protections often accompany rent control laws, since localities with rent controls need a mechanism to prohibit landlords from evicting tenants in rent-controlled units for the sole purpose of freeing the unit from restrictions on raising rents. Even in places without rent control, just cause ordinances protect tenants from no cause evictions, which can occur when landlords decide to terminate residency at the conclusion of a lease, usually due to a desire to increase monthly rent.

Warranty of Habitability

Another common ordinance protects renters facing issues with landlords who fail to address unhealthy or dangerous housing conditions. In Virginia, a tenant who withholds rent in response to poor



conditions must register with the court or risk eviction for nonpayment of rent. These warranty of habitability protections expressly recognize the tenant's right to withhold rent if the landlord fails to make repairs. In most cases, for the rent withholding to be lawful, the issue must pose a threat to the safety or health of the tenant, and the tenant must have notified the landlord of the issue and given them a reasonable amount of time to remedy the situation. In some cases, a tenant can withhold rent if the unit does not meet code. These ordinances also permit tenants to deduct repair costs from rent payments or protect tenants from evictions in retaliation for notifying city inspectors of unsafe conditions.

Nuisance Evictions

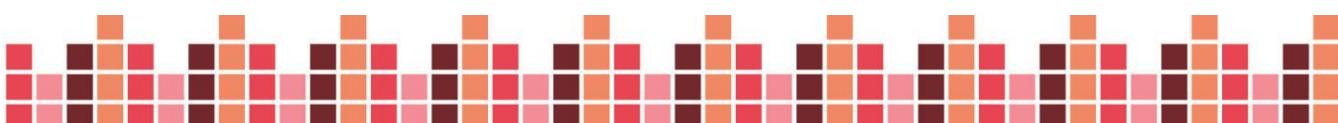
Several states and localities have passed measures to minimize evictions due to nuisance ordinances, which often require landlords to act to correct regular "nuisance properties," typically those that contact emergency services a certain number of times. Landlords are instructed to "abate the nuisance," often by evicting the tenants. As a result, nuisance abatement evictions disproportionately impact victims of domestic violence and other crimes and deter tenants from calling for emergency assistance when they need it, including during medical emergencies such as overdoses (Desmond & Valdez, 2012). In response, many states have made it illegal for landlords to evict due to emergency calls for victims of abuse or other crimes.

Lease Provisions

In addition to specific ordinances in a jurisdiction's landlord-tenant law, the terms of eviction processes in state legal code can impact the prevalence of eviction. Standards about past-due rent constitute one of the ways in which laws address evictions. Some states have laws requiring leases to include grace periods, in some cases up to 30 days, during which rent can be paid without late fees or penalties a few days past the first of the month, allowing tenants more time to finance and send their rental payments. Similarly, extended pay-or-quit periods, which begin upon a tenant's failure to pay rent on the due date, allow tenants more time to pay rent without entering the eviction process. To begin eviction processes, the landlord must give the tenant written notice of the late rent, the pay-or-quit notice, and a statement of their intentions of eviction if the rental payment is not promptly made. Many states, including Virginia, require pay-or-quit periods of five or fewer days, which rarely give tenants adequate time to secure additional funds or a new home. However, some states, such as Minnesota and Vermont, require a longer pay-or-quit period, which affords tenants more time to receive bi-weekly paychecks or other funds.

Protections for Seniors and Individuals with Disabilities

Localities commonly have additional protections against eviction and expanded tenants' rights for seniors and people with disabilities. In addition, the Fair Housing Act, along with state and local fair housing laws, provides that landlords are required to allow for reasonable accommodations for those with disabilities who wish to live in their rental property (U.S. Department of Housing and Urban Development, n.d.). In some cases in which individuals with a disability are facing eviction, they can ask for a reasonable accommodation in the eviction decision, which landlords are required to consider. Many senior citizens can have tenuous housing situations and face life-altering circumstances suddenly. Some localities have enacted protections for senior renters that allow them to terminate their lease without penalty. Finally, jurisdictions with rent control sometimes provide further protections for





seniors and individuals with disabilities within these laws, including lower rent increase rates and guarantees of continued residence after the property is removed from the rental market.

Right to Counsel

A handful of localities, most notably New York City and San Francisco, have granted tenants a right to counsel in eviction cases. Legal advice and guidance during the eviction process can make a major difference in the judgment decision. Studies have shown that tenants with legal representation in court are more likely to have a case dismissed or decided in their favor (Pattanayak et al., 2013). In New York, the introduction of the right to counsel led to 84% of those represented remaining in their homes. Additionally, providing a right to an attorney in eviction cases may lead to landlords' filing of fewer unlawful detainers because of their lower likelihood of quickly winning a judgment (New York City Human Resources Administration, 2018).

Lessening the severity of an eviction

Other laws and policies aim to reduce the negative impacts of eviction. As Matthew Desmond writes in his seminal ethnography on eviction in Milwaukee, “Eviction’s fallout is severe. Losing a home sends families to shelters, abandoned houses, and the streets. It invites depression and illness, [and] compels families to move into degrading housing” (Desmond, 2016). As has been examined in previous RVA Eviction Lab briefs, this housing instability can lead to poor employment and educational outcomes, health disparities and a move to lower quality housing. Limiting the severity of an eviction through legal and policy change can help stabilize households and mitigate its wide-reaching consequences.

Late Fee Limitations

Like policies that limit the incidence of evictions, states and localities can write language into landlord-tenant law that decreases the harshness of an eviction. Many states impose limitations or maximums on late fees charged by landlords, which are usually added on to any debts owed for late or non-payment of rent during the eviction process. Late fee maximums are often established as a percentage of the monthly rent, with some states setting the maximum fee as low as 4 percent or as high as 20 percent, or at a specific amount, usually \$10 to \$20. Some late fee limitations set caps on late fees per day, which can add up to hundreds more dollars in debt. While some states set late fee maximums, many landlord-tenant laws, including Virginia's, only mandate that late fees must be a “reasonable amount” or contain no measures addressing late fees at all.

Extreme Weather Eviction Bans

Some jurisdictions provide protections in their codes for tenants facing eviction during extreme weather, namely very cold temperatures. These protections delay scheduled evictions until weather allows for suitable conditions for moving belongings and finding new shelter. Similarly, some localities have implemented bans on shutting off utility use due to non-payment during extreme weather conditions. This approach limits the risks associated with homelessness in winter or summer, when vulnerable populations in particular are at risk of freezing or experiencing heat exhaustion.

Eviction Records Expungement

Adjusting legal language and enacting ordinances can strengthen tenant protections in eviction processes, but a record of an eviction plagues tenants for decades. Not only do debts from outstanding



eviction cases hurt credit scores and household finances, but finding a landlord willing to rent to someone with an eviction history can prove very difficult. Some states have passed legislation that limits the extent to which the public has access to tenants' eviction histories. Such measures include sealing records within a certain time of the eviction filing, expunging records for eviction cases dismissed or decided in favor of the tenant, or expediting record expungement, all of which would enable a tenant greater access to housing opportunities.

Curbing eviction through housing policy

Many housing policies indirectly address eviction by expanding access to safe and affordable rental housing. This point of intervention is particularly important in light of the RVA Eviction Lab's previous research linking Virginia's affordable housing shortage to its high eviction rates (Howell, 2019). The affordable housing deficit is most acute for households earning less than 30% of the Area Median Income, with Richmond supplying only 30 units for every 100 households at this income level (National Low Income Housing Coalition, 2016). These households consequently face the highest rent burden, a significant contributor to rising eviction rates at the neighborhood level. Moreover, RVA Eviction Lab has linked increases in affordable rental housing in some census tracts in Richmond not to the entry of new units in the rental market but to a decline in quality of existing housing units, reflected in significant concentrations of code violations (Howell, 2019). Against this backdrop, the two policies identified in this analysis, while far from the only ones that can impact the prevalence of eviction, could be considered in Virginia to preserve the affordability, safety, and quality of rental housing.

Rental Registration

A number of localities have rental registry or licensing programs to regulate their rental housing markets more effectively. Rental registration, usually passed as an ordinance, requires landlords to register every unit or building they intend to rent. Requirements for registration can be as simple as recording the rental property address and landlord contact information, but many ordinances require additional measures, usually related to code enforcement and environmental standards. Landlords who fail to register their rental units face fines or withholding of legal abilities (such as the ability to file unlawful detainers). Additionally, rental registers allow localities to collect information about landlords, which helps in identifying landlords or property managers who evict at high rates and consequently targeting eviction prevention programs or education efforts.

Rent Control

Finally, rent control, or rent stabilization, has been an impactful tool for preserving affordable rental housing in many different states. Such policies limit the amount by which a landlord can raise the rent over a given period of time, usually annually, by setting a maximum allowable percent increase on rent every year. Rent control typically only applies to units that have been in the market before a certain year (usually around the time the policy is adopted) and permits removal of the unit's rent-controlled status once the tenant vacates. Thus, rent control measures often require just cause eviction laws to prevent landlords from evicting tenants at the end of their lease to collect higher rents. Additionally, rent control's preservation of affordability, especially for long-term tenants, can lead to fewer evictions due to non-payment of rent.





Increasing Housing Supply

Such interventions as rental registries and rent control respond to the eviction crisis as it relates to existing housing stock. However, a discussion of broader housing policies aimed at reducing evictions necessitates recognition of the critical need to increase the supply of affordable housing, particularly for households earning less than 50% of the Area Median Income (AMI). As examined in another RVA Eviction Lab brief, Virginia faces a substantial and growing shortage of affordable housing for families earning less than half of the AMI, while new development has primarily focused on units affordable at 60% or 80% of the AMI (Howell, 2019). This gap in housing supply leaves many households with no affordable options, forcing them to pay more than 30% of their incomes for housing. Given the relationship between eviction and rent burden, an effective anti-eviction campaign requires efforts to expand the affordable housing options available to low-income Virginians, along with many of the preceding laws and policies more directly targeting eviction processes. RVA Eviction Lab has outlined supply-side interventions in its brief, *Eviction and the Rental Housing Market in the Commonwealth*, including increasing state- and local-level financial commitments to affordable rental housing, prioritizing the stewardship of public land for affordable housing, and realigning land use to allow for development of affordable rental housing (Howell, 2019).

Conclusion

While far from an exhaustive catalogue of laws and policies that can reduce the occurrence and impact of eviction, this overview offers insight to policy makers in the Richmond region of possible interventions to address the current eviction crisis. Legal amendments to landlord-tenant law, such as adopting just cause and rent withholding ordinances or extending pay-or-quit and grace periods, could result in lower eviction rates in Richmond. Additionally, passing policies that allow tenants who have experienced eviction to clear their eviction records or that limit the late fees landlords can impose could measurably limit the negative consequences of an eviction. Lastly, broader housing policy can play a major role in shaping a rental landscape, and measures such as rental registration or rent control can result in more sustainable housing conditions for households.





References

- Badger, Emily & Quoctrung Bui. (2018, April 7). "In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America." *New York Times*. New York, NY.
- Desmond, Matthew. (2016). *Evicted: Poverty and Profit in the American City*. New York: Crown.
- Desmond, Matthew & Valdez, Nicol. (2012). Unpolicing the urban poor: Consequences of third-party policing for inner-city women. *American Sociological Review*, 78(1), 117-141. <https://doi-org.proxy.library.vcu.edu/10.1177/0003122412470829>
- Eviction Lab. 2018. Princeton University.
<https://evictionlab.org/rankings/#/evictions?r=United%20States&a=o&d=evictionRate&lang=en>
- Howell, Kathryn. (2019). Eviction and the Rental Housing Market. RVA Eviction Lab. Retrieved from <https://cura.vcu.edu/media/cura/pdfs/cura-documents/EvictionandtheRentalHousingMarketintheCommonwealth.pdf>
- National Low Income Housing Coalition (2016). Gap Report. Retrieved from <https://nlihc.org/gap/2016/VA>
- New York City Human Resources Administration. (2018). Universal access to legal services: A report on year one of implementation in New York City. Retrieved from <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>
- Pattanayak, Cassandra Wolos, D. James Greiner & Jonathan Hennessy. (2013). The limits of unbundled legal assistance: A randomized study in a Massachusetts district court and prospects for the future. *Harvard Law Review*, 126(4), 1178. Retrieved from <http://search.ebscohost.com.proxy.library.vcu.edu/login.aspx?direct=true&AuthType=ip,url,cookie,uid&db=bth&AN=85479301&site=ehost-live&scope=site>

For more information about specific programs, see appendix or visit the following websites:

Just Cause

- *Just Cause Eviction Protection*, Tenants Union of Washington State:
<https://tenantsunion.org/en/rights/just-cause-eviction-protection>
- *Just Cause Eviction Ordinance*, Seattle Department of Construction & Inspections:
[http://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/just-cause-eviction-ordinance](http://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/just-cause-eviction-ordinance)
- *Topic No. 201: Overview of Just Cause Evictions*, San Francisco Rent Board:
<https://sfrb.org/topic-no-201-overview-just-cause-evictions>
- *City of San Francisco Tenant Protections* (information provided by Tenants Together):
<https://sanfrancisco-policies.glitch.me/>





- *Just Cause Eviction and Rent Increase Protections*, Oregon Law Center & Legal Aid Services of Oregon: <https://www.oregonhousingalliance.org/wp-content/uploads/2019/03/SB-608-post-passage-info-sheet-and-landlord-letter-OLC-LASO-March-8.pdf>
- *Guide to Eviction*, District of Columbia Office of the Tenant Advocate: <https://ota.dc.gov/page/guide-eviction>

Right to Counsel

- *Legal Services for Tenants: Universal Access to Legal Services*, NYC Human Resources Administration: <https://www1.nyc.gov/site/hra/help/legal-services-for-tenants.page>
- *Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions*, NYU Furman Center: https://furmancenter.org/files/UAC_Policy_Brief_12_11-18.pdf
- *Services*, San Francisco Mayor's Office of Housing and Community Development: <https://sfmohcd.org/services>
- *Tenant Right to Counsel*, Eviction Defense Collaborative (San Francisco): <http://evictiondefense.org/services/right-to-counsel/>
- *With Final Vote for McDuffie's "Expanding Access to Justice Act," D.C. Takes Bold Step Toward Establishing Civil Right to Counsel*, Kenyan R. McDuffie, D.C. Councilmember – Ward 5: <https://kenyanmcduffieward5.com/2017/06/27/press-release-with-final-vote-for-mcduffies-expanding-access-to-justice-act-d-c-takes-bold-step-toward-establishing-civil-right-to-counsel/>
- *Civil Legal Counsel Projects Program Grants*, D.C. Bar Foundation: <https://dcbarfoundation.org/grants/civil-legal-counsel-grants/>
- *Housing Right to Counsel Project*, D.C. Bar: <https://www.dcbarnet.org/pro-bono/about-the-center/right-to-counsel-project.cfm>

Warranty of Habitability

- *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, California Department of Consumer Affairs: <http://www.hed.ca.gov/manufactured-mobile-home/mobile-home-ombudsman/docs/Tenant-Landlord.pdf>
- *Tenant rights*, Massachusetts Office of Consumer Affairs and Business Regulation: <https://www.mass.gov/info-details/tenant-rights>

Protections for seniors and people with disabilities

- *Reasonable Accommodations and Modifications*, HUD's Office of Fair Housing and Equal Opportunity: https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications
- *Using the Reasonable-Accommodation Provision of the Fair Housing Act to Prevent the Eviction of a Tenant with Disabilities*, Shriver Center on Poverty Law: <https://www.povertylaw.org/clearinghouse/articles/using-reasonable-accommodation-provision-fair-housing-act-prevent-eviction-ten>
- *Senior Citizens Lease Termination: Know Your Rights*, United Tenants of Albany: <https://utalbany.org/wp-content/uploads/2019/01/Senior-Citizen-Lease-Termination.pdf>





- *Senior Citizen Lease Termination Law* (New York State), Elant: <https://elant.org/wp-content/uploads/2012/06/seniorcitizenleaseterminationlaw.pdf>
- *Senior Citizen Rent Increase Exemption (SCRIE)* (NYC), NYU Furman Center: <https://furmancenter.org/coredata/directory/entry/senior-citizen-rent-increase-exemption-program>
- *Disability Rent Increase Exemption (DRIE)* (NYC), NYU Furman Center: <https://furmancenter.org/coredata/directory/entry/disability-rent-increase-exemption>
- *What Renters Should Know About the “Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016,”* District of Columbia Office of the Tenant Advocate: <https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/Elderly%20and%20Disability%20Tenant%20Protection%20Law-FINAL.pdf>
- Elderly Tenant Rights Brochure, District of Columbia Office of the Tenant Advocate: https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2013.04.26%20Elderly%20Tenant%20Rights%20Brochure.OTA_.pdf

Nuisance eviction prevention

- *AB-2413 Tenancy: law enforcement and emergency assistance*, California Legislative Information: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413
- *Title 53*, Pennsylvania General Assembly: <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=53&div=o&chpt=3&sctn=4&subscxn=0>

Extended pay-or-quit periods

- *2019 Minnesota Statutes*, Minnesota Legislature Office of the Revisor of Statutes: <https://www.revisor.mn.gov/statutes/cite/504B.135>
- *The Vermont Statutes Online*, Vermont General Assembly: <https://legislature.vermont.gov/statutes/section/09/137/04467>

Grace periods

- *Section 15B*, Massachusetts Legislature: <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186/Section15B>
- *Paying rent*, MassLegalHelp.org, <https://www.masslegalhelp.org/housing/lt1-chapter-5-paying-rent>
- *§6028. Penalties for late payment of rent*, Maine Legislature: <http://www.mainelegislature.org/legis/statutes/14/title14sec6028.html>
- *Chapter 90 – Residential landlord and Tenant 2017 Edition*, Oregon Legislature: https://www.oregonlegislature.gov/bills_laws/ors/ors090.html

Cold weather eviction bans

- *§ 42-3505.01. Evictions*. Code of the District of Columbia: <https://code.dccouncil.us/dc/council/code/sections/42-3505.01.html>
- *General Order 2018-03*, Circuit Court of Cook County, Illinois: <https://www.ksnlaw.com/blog/wp-content/uploads/2018/11/doc00453120181129143619.pdf>





Late fee limitations

- *§6028. Penalties for late payment of rent*, Maine Legislature:
<http://www.mainelegislature.org/legis/statutes/14/title14sec6028.html>
- *Uniform Residential Landlord and Tenant Law, §562A.9*, Iowa Legislature:
<https://www.legis.iowa.gov/docs/code/562A.9.pdf>
- *Chapter 43. Landlord and Tenant, Article 1, General Provisions*, North Carolina General Assembly:
https://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_42.html
- *Property Code, Title 8 Landlord and Tenant, Chapter 92. Residential Tenancies, Subchapter A. General Provisions*, Texas Constitution and Statutes:
<https://texas.public.law/statutes/tex. prop. code section 92.019>

Eviction record expungement

- *Expunging an Eviction Case*, Minnesota Legal Services Coalition:
<https://www.lawhelpmn.org/sites/default/files/2019-07/H-27%20Expunging%20Evictions.pdf>
- *Chapter 59.18 RCW Residential Landlord-Tenant Act*, Washington State Legislature:
<https://apps.leg.wa.gov/RCW/default.aspx?cite=59.18.367>
- *AB-2819 Unlawful detainer proceedings*, California Legislative Information:
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2819

Rental registration

- *Rental Housing Licensing*, City of Boulder, Colorado:
<https://bouldercolorado.gov/plan-develop/rental-housing-licensing>
- *Rental License*, City of Philadelphia:
<https://business.phila.gov/housing-inspection-license/>
- *Mayor's Taskforce on Eviction Prevention and Response*, City of Philadelphia:
<https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-Report.pdf>
- *Regulatory Services Violations Dashboard*, Minneapolis Regulatory Services:
https://tableau.minneapolismn.gov/views/OpenDataRegulatoryServices-Violations/Introduction?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no
- *Rental Licensing*, Minneapolis Housing & Fire Inspections:
<http://www.minneapolismn.gov/inspections/rental/index.htm>
- *Rental Registration & Inspection Ordinance – About RRIO*, Seattle Department of Construction & Inspections:
<http://www.seattle.gov/sdci/codes/licensing-and-registration/rental-registration-and-inspection-ordinance/>
- *Seattle Landlord-Tenant Laws*, Seattle Department of Construction & Inspections:
http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpddo16420.pdf
- *Rental Inspections Program*, City of Roanoke:
<https://www.roanokeva.gov/263/Rental-Inspection-Program>

