

HOAs and Landlord-Tenant Law



**HOW ASSOCIATIONS CAN INTERACT WITH
LANDLORDS AND RENTERS**



COMPTON & DULING
Attorneys At Law

Can You Prohibit Renters Entirely?



SHORT ANSWER: NO (unless renting prohibited in Declaration)

§ 55-509.3:1. Rental of lots.

A. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § [55-509.3](#)*;
2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;
3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § [55-509.3](#);
4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;

*§ 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area. . .



Can You Prohibit Renters Entirely?



§ 55-509.3:1. Rental of lots (continued)

5. Charge any deposit from the lot owner or the tenant of the lot owner; or
6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to so evict. However, if the lot owner designates a person licensed under the provisions of § [54.1-2106.1](#) as the lot owner's authorized representative with respect to any lease, the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § [55-515](#) and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.



So What CAN You Do About Renters?



§ 55-509.3:1. Rental of lots (continued)

B. The association **may require** the lot owner to provide the association with the names and contact information of the tenants and authorized occupants under such lease and any authorized agent of the lot owner, and vehicle information for such tenants or authorized occupants. The association may require the lot owner to provide the association with the tenant's **acknowledgement of and consent to** any rules and regulations of the association.

C. The provisions of this section shall not apply to lots owned by the association.
2015, c. [277](#); 2016, c. [471](#).



What If The Renters Are Behaving Badly?



Renters are invitees/guests of the owner. As such, bad behavior by a tenant is bad behavior by the owner (and the owner is responsible to make sure his tenants aren't misbehaving.)

§ 55-513. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.



What If The Renters Are Behaving Badly?



Make sure your association has *written policies* for things like parking, use of common areas, architectural guidelines, etc. Harder to hold an owner liable for tenant behavior where there is no “rule” that was broken by a tenant.

§ 55-513. Adoption and enforcement of rules (continued)

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.



What If The Renters Are Behaving Badly?



Suspension of an owners' rights to use facilities/services is suspension of the tenants' rights as well. The loss of parking and swimming passes can help keep an unruly tenant in line.

§ 55-513. Adoption and enforcement of rules (continued)

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.



What If The Renters Are Behaving Badly?



First step before suspending privileges: MUST have notice and a hearing. Send *14 days prior* notice both to the Owner at his/her address with a copy to the premises (as a courtesy copy addressed to the tenant). Send notice of results *within 7 days of hearing*.

§ 55-513. Adoption and enforcement of rules (continued)

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § [55-510](#). If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.



What If The Renters Are Behaving Badly?



If Owner is found in violation, give time frame to comply (as part of 7 day notice of results: “Correct violation within X days or fine will begin on X day”)

§ 55-513. Adoption and enforcement of rules (continued)

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § [55-516](#). However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.



What If The Renters Are Behaving Badly?



If no compliance after 90 days, seek court order (and ask for tenant to be evicted by owner). If you'd rather file suit immediately, that's fine, but you lose the right to seek \$900 fine (90 days x \$10/day)

§ 55-513. Adoption and enforcement of rules (continued)

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, **the court may order the unit owner to abate or remedy the violation.**

G. In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit. 1989, c. 679; 1991, c. 667; 1993, c. 956; 1994, c. [368](#); 1997, cc. [173](#), [417](#); 2000, cc. [846](#), [905](#); 2002, c. [509](#); 2008, cc. [851](#), [871](#); 2011, cc. [372](#), [378](#); 2014, c. [784](#).



What If The Renters Are Behaving Badly?



First step before suspending privileges: MUST have notice and a hearing. Send notice both to the Owner at his/her address with a copy to the premises (as a courtesy copy addressed to the tenant if you have their names).

Steps:

- (1) Notice of Violation and time to correct
- (2) 14 Day Notice of Violation Hearing
- (3) Hold the Hearing
- (4) 7 Day Notice of Results of Hearing
- (5) Time to Correct Violation
- (6) Begin Charging \$10/day for 90 days (or one time fine of \$50)
- (7) File Warrant in Debt and seek \$900 money judgment PLUS court order to abate violation



Landlord/Tenant Basics in Virginia



Residential Tenants have rights – NO SELF HELP LOCKOUTS

Two governing Acts:

- Virginia Landlord Tenant Act (VLTA): codified the common law, can be applicable to both commercial and residential tenants
- Virginia Residential Landlord Tenant Act (VRLTA): specific to residential tenants.
 - Recently amended by Virginia legislature to allow very few exceptions – this applies to nearly all residential landlords now.



Landlord/Tenant Basics in Virginia



Basics for Tenant Bad Behavior:

Landlords can:

- Send a 21/30 day notice for “nonmonetary” violations of the lease
- Send a 30 day notice of termination for month to month tenants or for leases that are expiring (unless lease requires 60 day notice etc.)
- Send a 5 day pay or quit for unpaid rent



Landlord/Tenant Basics in Virginia



Basics for Tenant Bad Behavior:

After the time period runs on the notice, Landlords can:

- File a SFUD (Summons for unlawful detainer)
 - First return is 3-4 weeks after filing date
 - Tenant can appear and demand a trial
 - Trial date is usually 1-2 weeks after first return date



Landlord/Tenant Basics in Virginia



Basics for Tenant Bad Behavior:

If Landlord prevails at trial, Landlord can:

- File a Writ of Possession
 - Must wait ten (10) days after trial date to file (appeal period)
 - Sheriffs will respond to writ within 2-3 weeks and post eviction notice
 - Eviction notice gives tenant another 72 hours to vacate
 - If tenant still hasn't vacated, Sheriff supervises lockout
 - Must give 24 hours reasonable access *after* lockout
 - **DON'T GIVE KEYS BACK.** Open door at beginning of day, close at end of day.



In Summary



In summary:

Residential tenants have rights in Virginia and are entitled to proper notice and proper court filings. They cannot be locked out, ever.

It takes time (sometimes 3-6 months!) to evict a tenant. It is also costly. This discourages Landlords from evicting when tenants are behaving badly but still paying the rent.



In Summary



In summary:

HOAs have limited ability to regulate renters. They cannot ever prohibit someone from renting their unit.

HOA's *can, however,* ask for tenant contact info and vehicle info, and can require that tenants sign off and acknowledge consent to the HOA's governing documents.

HOA's can also hold the Landlord/Owner responsible for the tenant's bad behavior through the regular covenants violation process.



Questions?



Jason E. Hickman, Esq.
Cassandra E. Sheehan, Esq.
Heather R. Steele, Esq.
703-583-6060

jeh@comptonduling.com

ces@comptonduling.com

hrs@comptonduling.com



COMPTON & DULING
Attorneys At Law

