

# 2020 New Laws

With over 3,300 bills introduced, the 2020 Virginia General Assembly session set records. The Virginia REALTORS® Government Relations team reviewed every bill, including the thousands of amendments made to the bills as they worked their way through the system, working tirelessly to protect your business and the rights of property owners.

Below is a summary of the legislation that passed that will have an impact on how you do business. Each description starts with what the bill does and then contains information on what that law means.

If you want to read the full text of the legislation, the bill number provided is a hyperlink to the text of the bill as it is enacted into law. All laws are effective July 1, 2020 unless otherwise noted. Bills that were part of the Virginia REALTORS® Legislative Agenda are also noted.

## 1 License

### 1.1 [Death or Disability of Broker \(HB 513\)](#) (Virginia REALTORS®)

This bill updates and clarifies current law regarding what happens upon the death or disability of the sole broker at a firm. Previously, the law only addressed the death or disability of the sole broker in a sole proprietorship, corporation, or partnership. Now, the law will address all business entity types. This is a technical change in the law to provide continuity in the event of the death or disability of a sole broker at a firm. It is important to have a business continuity plan and will to establish who you want to wrap up your business in the event of your death or disability, otherwise the law give the Real Estate Board a list of individuals to appoint to handle this task.

### 1.2 [Licenses for spouses of military members and veterans \(HB 967\)](#)

This bill expands the current law that expedites the issuance of licenses to spouses of military from just those who are stationed in Virginia to those stationed in Virginia, an adjoining state, or the District of Columbia. Additionally, it expands the current law to cover spouses accompanying those who are on federal active duty orders or a veteran who has left active-duty service within one year of the submission of the application. This makes Virginia a more attractive place for military and recently retired military as their spouses are able to continue their careers more seamlessly.

## 2 Business Issues

### 2.1 Business Licenses ([HB 466](#))

Currently, localities with a population greater than 50,000 can waive license requirements for businesses with gross receipts of less than \$100,000. This bill increases the limit to \$200,000 or less. This means that in more densely populated localities, the locality may waive the requirement for a business license for a greater number of people.

### 2.2 Cell Phones While Driving ([HB 874](#) / [SB 160](#)) (Effective January 1, 2021)

This law makes it illegal to hold a handheld personal communications device (like a cell phone) while driving a moving vehicle. One exception that could apply to the general public is that you are able to use a handheld personal communications device to report an emergency. A first offense is punishable by a \$125 fine, subsequent violations or violations in a highway work zone are punishable by a \$250 fine. This means that it is essential that you use hands-free technology while driving in Virginia. If you need to interact with your phone not using hands-free, you should pull over at the next exit or parking lot.

### 2.3 Worker Misclassification

A number of bills passed that dealt with worker misclassification. These bills could impact your relationship with assistants, transaction coordinators, or others who work for you. It is essential that you properly classify all workers by first assuming that they will be an employee, then using the IRS guidelines to determine whether the individual can be classified as an independent contractor. Failure to properly classify a worker could lead to civil penalties (under HB 1407) and damages (under HB 984 / SB 894).

#### 2.3.1 Misclassification Right to Sue ([HB 984](#) / [SB 894](#))

This law first creates a presumption that an individual who performs services for pay is an employee unless it is shown that the individual is an independent contractor or statutory nonemployee under the [Internal Revenue Service \(IRS\) guidelines](#). It then creates a process for an individual who has been improperly classified as an independent contractor to bring a civil lawsuit for damages. Damages include any wages, salary, employment benefits (including expenses incurred by the employee that would otherwise have been covered by insurance), or other compensation lost to the individual; reasonable attorney's fees; and the costs incurred by the individual bringing the action. This means that you should start from the position that anyone who does work for you is an employee unless you are able to clearly show that they should be an independent contractor or statutory nonemployee under the IRS guidelines. More information about the IRS [guidelines can be found here](#).

### 2.3.2 Worker Misclassification Investigation ([HB 1407](#)) (Effective January 1, 2021)

The Virginia Department of Taxation is given the authority to investigate and make determinations regarding worker misclassification. Under this bill, an employer who misclassifies an employee as an independent contractor will be subject to a civil penalty of up to \$1,000 per misclassified individual for a first offense, up to \$2,500 per misclassified individual for a second offense, and up to \$5,000 per misclassified individual for subsequent offenses. Additionally, upon subsequent violations, all public bodies and covered institutions shall not award a contract to the employer or any firm, corporation, or partnership in which the employer has an interest for a period of up to one year from the date of notice of the second offense, and for a period of up to two years from the date of the notice of the third or subsequent offense. This means that if you misclassify an employee as an independent contractor, you will face fines of progressively larger amounts per employee who was misclassified. Additionally, no public body or covered institution, such as a college or university, can contract with you or any company in which you have an ownership interest for a period of time after multiple misclassifications.

### 2.4 Virginia Telephone Privacy Protection Act ([HB 1244](#) / [SB 812](#))

Currently, Virginia law puts restrictions on calls made to wireless telephones. These bills add protections for landlines and text messages sent to wireless telephones with a Virginia area code or to a wireless telephone registered to any person who is a resident of the Commonwealth. They also create progressive discipline for violations: \$500 for a first violation, \$1,000 for a second violation, and \$5,000 for each subsequent violation. This means that it is important for you to pay careful attention to the Do Not Call list and follow all telephone solicitation laws and regulations when calling or texting any phone number with a Virginia area code or a phone number belonging to a resident of Virginia. Remember, as the person whose services are being marketed, you are responsible even if you are not the one making the call or sending the text.

## 3 Common Interest Communities

### 3.1 POA & Condo Act Contract Disclosure Statement ([HB 176](#) / [SB 672](#)) (Virginia REALTORS®)

These bills amend the Property Owners' Association Act and the Virginia Condominium Act to allow the parties to agree, in writing, to extend the three-day right of rescission up to an additional four days. This means that the parties can agree in the contract, or in an amendment to the contract, for the buyer to have additional days to review the Association packet. Note that the law does not allow the parties to reduce the number of days to review the Association packet and caps the extension at an additional four days.

### 3.2 Display of Political Signs in HOAs ([HB 720](#))

This bill adds an item to the required disclosure packet requiring Property Owners' Associations to include a statement setting forth any restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on his lot. This means that if there are any restrictions on political signs within a Property Owners' Association, that information will be included in the disclosure packet the buyer receives.

## 4 Fair Housing

Several bills passed the 2020 General Assembly that amend not only the Virginia Fair Housing Act, but laws impacting civil rights and equality generally. Those that apply to housing or could impact real estate licensees are included below despite not being part of the Virginia Fair Housing Act specifically.

### 4.1 Virginia Fair Housing Law

The following bills add protected classes to the Virginia Fair Housing Act. Now, the Virginia Fair Housing Act covers the following protected classes: race, color, religion, national origin, sex, elderliness, familial status, disability, source of funds, sexual orientation, gender identity, and status as a veteran. Note that the term "handicap" has been changed to "disability" throughout the law.

#### 4.1.1 Source of Income ([HB 6](#))

This bill adds "Source of funds" to the list of protected classes. "Source of funds" is defined as "any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity." The law then provides two exceptions that apply to the source of funds protection: first, the owner does not own, or have greater than 10% interest in, more than four rental units in the Commonwealth at the time of the denial; second, if the source is not approved within 15 days of the person's submission of the request for tenancy approval. This means that any landlord who owns, or has more than a 10% interest in, five or more rentals in Virginia cannot reject an application simply because of their source of funds unless it takes more than 15 days for the application to be approved. These exceptions acknowledge the need to balance the protection of individuals with subsidies and the additional costs or delays that can be associated with approval of the unit by such programs.

#### 4.1.2 Sexual Orientation & Gender Identity ([HB 1049](#))

This bill adds sexual orientation and gender identity to the list of protected categories not only in the Virginia Fair Housing Act, but also in sections of the law prohibiting discrimination in

employment, public accommodation, public contracting, apprenticeship programs, banking, and insurance. This means that sexual orientation and gender identity are now broadly protected classes throughout Virginia.

#### 4.1.3 Sexual Orientation, Gender Identity, Status as Veteran ([SB 868](#))

This bill adds sexual orientation, gender identity, and status as a veteran to the list of protected categories in not only in the Virginia Fair Housing Act, but also in sections of the law prohibiting discrimination in employment, public accommodation, public contracting, apprenticeship programs, banking, and insurance. In addition to protections added under HB 1049 above, this bill provides protection to veterans in Virginia. This means that sexual orientation, gender identity, and status as a veteran are now broadly protected classes throughout Virginia.

#### 4.2 Restrictive Covenants ([HB 788](#)) (Virginia REALTORS®)

Under this bill, no deed recorded on or after July 1, 2020 may contain restrictive covenants that violate the Virginia Fair Housing Act by restricting ownership or use of the property based on a protected class. Attorneys who prepare or submit deeds for recordation have the responsibility for ensuring that the specific portion of such a restrictive covenant is not specifically referenced in the deed prior to recordation. The bill also includes a process for owners of real property to release restrictive covenants that violate Fair Housing before or at the time a deed is transferred. Finally, the bill updates the part of the law that lists types of deeds that are not taxable to include the Certificate of Release of Certain Prohibited Covenants. This means that after July 1, 2020, no deed in Virginia can be recorded if it contains references to restrictive covenants that would violate Fair Housing. If a property owner wishes to remove such restrictive covenants prior to selling their house, there is a mechanism to do so, and they will not be charged recordation tax to do so.

## 5 Insurance

### 5.1 Association Health Plans ([HB 795](#) / [SB 235](#)) (Virginia REALTORS®)

These bills are the first step in Virginia REALTORS® being able to offer an association health plan by allowing associations to work with insurance providers in Virginia and establish health insurance plans that they can offer to members of their associations. Once passed, there are still several steps before insurance is available to members, including Virginia receiving a waiver from the federal government. This bill initially passed the General Assembly with near unanimous support. The Governor recommended amendments which would require the bill to be reenacted in the 2021 General Assembly session, which was rejected by the House and Senate on April 22. The Governor has until May 22, 2020 to sign the bill, allow it to become law, or veto the bill.

## 6 Property Management

### 6.1 Rent into Escrow ([SB 653](#)) (Virginia REALTORS®)

This bill requires all rent, regardless of when received, to be placed in an escrow account by the end of the fifth business banking day following receipt unless otherwise agreed to in writing by the principals to a lease transaction. This means that you must deposit all rent checks, even for the current month's rent, into an escrow account and then disburse as appropriate from there.

### 6.2 Mandatory Disclosure for Leasing Agents ([HB 1161](#))

Licenses engaged by landlords with actual knowledge must now disclose to prospective tenants the existence of any pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition of "lead free." The requirement for licenses to disclose defective drywall has been removed from the Virginia Real Estate Licensing law; however, the requirement for a landlord to disclose defective drywall remains in the Virginia Residential Landlord Tenant Act (VRLTA).

### 6.3 Status as Victim of Family Abuse ([HB 99](#))

This bill updates the VRLTA to require a landlord to consider evidence of an applicant's status as a victim of family abuse, as defined in the law, to mitigate any adverse effect on an otherwise qualified applicant's low credit score. The law provides a list of ways the applicant can establish their status as a victim of family abuse. Further, if the landlord does not comply with the law, the applicant may recover actual damages, including all money paid to the landlord as an application fee, application deposit, or any out-of-pocket expenses, as well as attorney's fees. The law finally includes that any information the landlord receives as part of this process is covered by the section of the law regarding confidentiality of tenant records. This means that landlords must consider evidence of an applicant's status as a victim of family abuse to mitigate a low credit score if they are otherwise qualified. Failure to do so could lead to damages, attorney's fees, and return of any money the applicant provided to the landlord. Any information the landlord receives about the applicant's status as a victim of family abuse is considered confidential and may only be released when there is a subpoena.

### 6.4 Statement of Tenant Rights and Responsibilities ([HB 393](#) / [SB 707](#))

These bills require the Department of Housing and Community Development (DHCD), working with a stakeholder group, to develop a statement explaining in plain language the rights and responsibilities of tenants under the VRLTA. The form must be in at least 14-point font, contain the telephone number and website address for the statewide legal aid organization, direct

tenants with questions to contact such organization, and will be maintained on the DHCD website along with a printable form that must be signed by the parties to a lease. Landlords must provide a copy of the form along with the lease within one month of the effective date of the lease. Failure to provide the form or lease will not invalidate the lease; however, a landlord cannot file or maintain an action against the tenant for any lease violation until he has provided the tenant with the statement of tenant rights and responsibilities. This means that landlords and property managers must provide the form from the DHCD website as soon as practical, but in no event later than one month after the effective date of the lease, and get the tenant to sign the acknowledgement form before filing any action against the tenant under the lease.

#### 6.5 Termination Notice for Tenants with Rent Assistance ([HB 519](#) / [SB 115](#))

These bills require that any notice of termination for a tenant who is receiving rent assistance through any federal, state, or local program, is not effective unless it contains on the first page, in type no smaller or less legible than other text in the notice, the statewide legal aid telephone number and website. This means that for any tenant receiving rent assistance through a governmental program, any notice to terminate must contain the telephone number and website for the statewide legal aid on the first page in font the same size as the rest of the notice.

#### 6.6 Security Deposits ([HB 594](#) / [SB 388](#)) (Virginia REALTORS®)

These bills change the trigger for when the security deposit must be returned to the later of the termination of tenancy or the date the tenant vacates the dwelling unit. This means that if a lease is terminated but the tenant fails to move out, the security deposit does not have to be returned until after the tenant moves out. Additionally, this means that if the tenant moves out early but the lease has not terminated, the security deposit does not have to be returned until after the lease is terminated.

#### 6.7 Damage Insurance ([HB 1333](#))

This bill clarifies that the landlord may collect either a security deposit or require damage insurance coverage for any amount, or a combination, so long as the total amount does not exceed two months rent. The bill goes on to outline the requirements for a damage insurance policy and state that a tenant who initially opts for a damage insurance policy may change to a security deposit at any time during the lease by paying the landlord the full security deposit. It is important to review your policies and leases to ensure that any lease that calls for a damage insurance policy does not require coverage greater than two months rent (or a combination of a security deposit and damage insurance policy).

### 6.8 Ex Parte Order to Recover Possession for Unlawful Ouster ([HB 1401](#))

This bill allows a judge to issue an ex parte (without party) order when receiving a petition under the VRLTA to recover possession or restore essential services and there is a finding that the petitioner (tenant) has attempted to provide the landlord with actual notice of the hearing on the petition. Such ex parte order will be preliminary and specify a date within 5 days for the full hearing on the merits of the petition. This means that if a landlord unlawfully stops providing essential services or somehow restricts access for the tenant, a judge can issue an order in favor of the tenant whether or not the landlord appears in court, but there must be a full hearing on the petition within five days.

### 6.9 Restrictions on Charges for Late Payment of Rent ([HB 1420](#)) (Effective April 22, 2020)

This bill caps late fees or charges to the lesser of 10% of the periodic rent or 10% of the balance owed. Additionally, late fees or charges can only be charged if such charge is provided for in the lease. This means that you will need to ensure that your lease calls for late fees or charges and that such term caps the late fees at the lesser of 10% of the periodic rent or 10% of the balance owed.

### 6.10 Expungement of Unlawful Detainer ([SB 640](#)) (Effective January 1, 2022)

If an action for unlawful detainer filed in general district court is dismissed or a nonsuit is taken, the tenant may file a petition requesting expungement of the court records related to the unlawful detainer if no order of possession has been entered in the case. This means that if there is no order of possession, a tenant can have the record that an unlawful detainer was filed against them removed if it was nonsuited or dismissed.

### 6.11 Tenant's Remedy by Repair ([SB 905](#))

This bill amends the VRLTA to give the tenant the ability to repair certain material noncompliances by the landlord in certain situations. If there is a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including an infestation of rodents or a lack of heat, hot or cold running water, light, electricity, or adequate sewage disposal facilities, and the tenant has notified the landlord of the condition in writing, the landlord must take reasonable steps to make the repair or to remedy the condition within 14 days of receiving notice from the tenant. If the landlord fails to take reasonable steps within 14 days, the tenant may contract with a licensed third-party contractor to repair or remedy the condition. A tenant who contracts with a third-party licensed contractor or pesticide business is entitled to recover the actual costs

incurred for the work performed, not exceeding the greater of one month's rent or \$1,500. If the landlord does not reimburse the tenant, the tenant may deduct the actual costs incurred for the work after submitting an itemized statement accompanied by receipts for purchased items and third-party contractor or pest control services. The tenant may not take advantage of this new provision if the issue was caused by the tenant, an authorized occupant, or a guest; the landlord was not able to repair the condition because the landlord was denied access to the dwelling unit; or if the landlord completes the repair prior to the tenant's contracting with a third-party. This means that property managers should take reasonable steps to make all repairs within 14 days of receiving written notice from the tenant of a problem in the unit. Property managers should also document what steps they have taken in the event that the repairs are unable to be completed within 14 days.

## 7 Residential Property Disclosure Act

### 7.1 Updated form ([HB 838](#))

This bill requires the form signed by the buyer to acknowledge that the buyer has been advised of the disclosures listed in the residential property disclosure statement located on the Virginia Real Estate Board (VREB) website. This is a slight change from previous language where the buyer acknowledged he had been advised to review the disclosure statement on the VREB website.

The law continues to say that the disclosures provided to the buyer shall be current as of the date of delivery and that nothing requires the seller to provide a subsequent form in the event that there are changes to the Residential Property Disclosure Act between the form being provided and settlement. This means that there will be no confusion over whether sellers need to provide a new disclosure statement to a buyer in the event the law is changed while under contract.

### 7.2 Stormwater Detention Facilities ([HB 859](#))

This bill updates the list of disclosures in the Residential Property Disclosure Act to remove the statement that the owner is making no representations or warranties with respect to the presence of any stormwater detention facilities or maintenance agreements. Now, it is a mandatory, affirmative disclosure if the owner has actual knowledge of a privately owned stormwater management facility located on the property to disclose the long-term maintenance and inspection requirements. This means that if the seller has knowledge about a stormwater detention facility on the property, he must disclose maintenance and inspection requirements to the buyer.

### 7.3 New disclosures

The new additions to the Virginia Residential Property Disclosure Act Statement are:

1. Lead pipes ([HB 1161 / HB 1342](#))
2. Marine clays ([HB 174](#))
3. Radon gas ([HB 175](#))
4. Residential building energy analysis ([HB 518 / SB 628](#))
5. Defective Drywall ([HB 1342](#))
6. Dams ([HB 1569 / SB 343](#))

## 8 Miscellaneous

### 8.1 Septic Inspections ([HB 1266](#))

This bill updates the law to require anyone who is going to perform a septic inspection in connection with a real estate transaction to hold a valid onsite sewage system operator, onsite sewage system installer, or onsite soil evaluator license. This means that only certain individuals will be able to perform septic inspections for real estate transactions going forward.

### 8.2 Furlough & COVID-19 Protections ([HB 340](#)) (Effective April 22, 2020)

Similar to the 2019 Act that provided relief for tenants, landlords, and homeowners who were impacted by the government shutdown, this bill provides protections to tenants, landlords of tenants, or homeowners who are furloughed or impacted by a closure of the United States government. A tenant who is impacted by a shutdown of the federal government and is facing an unlawful detainer, can provide written proof that he is furloughed or otherwise is not receiving wages due to the government shutdown, and receive a 60-day continuance of the unlawful detainer. A homeowner who is furloughed or impacted by a government shutdown, has defaulted on a note and is subject to a foreclosure proceeding, will receive a 30-day stay on the proceeding after providing proof that he was furloughed or not receiving pay. A homeowner who rents to a tenant who was furloughed or did not receive pay qualifies for the same 30-day stay as a homeowner who was himself furloughed. The law details what written proof must be provided and what an impacted individual must do to receive the stay of action. This means that in the event of another federal government shut down, tenants, landlords, and homeowners should start to document their furlough status or change in pay so they can provide this to the courts in the event that there is an unlawful detainer or foreclosure action.

The Governor amended this bill in April 2020 to extend similar protections to individuals impacted by the COVID-19 pandemic, unless the individual is protected under another federal, state, or local law or regulation enacted in response to the COVID-19 pandemic or the declared State of Emergency related to COVID-19. The protections provided under the COVID-19

expansion expire 90 days after the end of the state of emergency declared by the Governor in response to COVID-19.

### 8.3 Grantor's Tax & Regional Transportation Improvement Fee ([SB 230](#))

Current law requires the grantor to pay the grantor's tax and the regional transportation improvement fee. This bill allows the parties to agree for the grantee to pay all or a portion of the tax or fee. Both sections still default to the grantor paying the tax or fee. This means that while the seller is still the default to pay the grantor's tax and regional transportation improvement fee, if applicable, the parties can agree to shift some or all of these to the buyer.

### 8.4 Kickbacks & Other Payments ([HB 819](#))

This bill moves the provisions of the Virginia equivalent of RESPA to allow the State Corporation Commission to impose penalties, issue injunctions, and require restitution in cases where a person who does not hold a license from the appropriate licensing authority has violated the law. It also adds provisions that authorize courts to assess civil penalties of not more than \$5,000 per violation and authorizes the recovery of costs and reasonable expenses and attorney's fees. This means that there will likely be an increase in enforcement of the Virginia equivalent of RESPA regarding kickbacks, rebates, commissions, and other payments for the referral of business.

### 8.5 Flood Plain Ordinances ([HB 998](#))

This bill allows localities to adopt ordinances that regulate the activity on, use of, or development of a flood plain. This means that localities may begin to adopt restrictions for properties that are within specific flood plains.