

EVICTION FACTSHEET

How does my landlord start the eviction process?

- Your landlord must first give you a written notice saying how you have violated the lease and give you time to fix the violation. The amount of time you have to fix things depends on the type of violation. If you do not fix the violation within a certain time period, the landlord can file an eviction lawsuit, called an “unlawful detainer” and ask the court for an order to have you removed.
 - If the violation was for not paying rent, the landlord must give you 14 days to pay what you owe or leave voluntarily.
 - If it was some other violation that can be fixed, such as having a guest stay over too long, the landlord must give you 21 days to fix the problem.
 - If the violation is not remediable, the landlord only has to give you 30 days to leave the property voluntarily.
- Once they’ve filed, they have to “serve” you with the lawsuit, delivering you a copy of the court paperwork (“Summons for Unlawful Detainer”). This tells you when and where you are due in court and the amount of money your landlord is seeking, including any late fees, damages, court costs, etc.
- Your landlord can “serve” you by posting a notice on your door and also sending it to you via first class mail or giving it to you in person. The summons is often delivered by a Deputy Sheriff. They can give it to anyone in your household who is over 16 years of age.
- If your landlord has done these things, saying that you never got or saw your summons is not enough to protect you. The case will move forward. If the landlord has threatened to file, you should be aware that the summons might be coming and tell everyone in your home as well.

How do I get ready for my court date?

- You should always prepare for your court date. You are not required to have a lawyer, but a lawyer can be a big help. Gather any evidence, such as your lease, notices from your landlord, or any communications between you and your landlord, and any witnesses that may support your case.
- If your witness doesn’t want to come to court, you can ask the court to subpoena them. You have to do this at least 10 days before your court date. There is a small fee for this, but the court has something called a “Form CC-1414”. This is a “Petition for Proceeding in a Civil Case without payment of Fees or Costs”. You can also use this for other court fees that you cannot afford.
- If your landlord is suing you for not paying rent, you may be able to avoid an eviction judgment by paying everything that you owe, including late fees, court costs, and attorney fees before or at your court date. This is called the “right of redemption”.
- If your landlord is suing you for not paying rent and the court has entered a judgment against you, you can have one last opportunity to avoid eviction. You can pay everything you owe, including late fees, attorneys’ fees, court costs, and sheriff fees, at least 24 hours before the Sheriff’s eviction. This is called the “extended right of redemption.”

What will happen if I don’t go to my hearing?

- You should always go to your court date. If you don’t go to court, the court will likely enter a “default judgment” against you, meaning the landlord can move forward with the next step in the eviction process, and you lose your right of appeal. You will not be arrested for skipping court in an eviction case.

What if I can't go?

- You can ask for a “continuance”. Call the Clerk’s Office as soon as you know that you cannot make it. Ask for the rules for that court and follow them. It’s a good idea to also write and fax a letter to the court explaining why you can’t come and need a continuance.

What happens at court?

- First – Don’t Be Late. It’s a good idea to be there at least 15 minutes before your hearing. Let the Clerk know that you’re there for your case. If you are running behind, call the court clerk to let them know you are on the way.
- The judge will call you and ask whether you admit or deny what the landlord is claiming.
 - If you admit what the landlord is claiming, the court will enter a “judgment for possession”, meaning the landlord has legal right to the property and can move forward with the next steps in the eviction process. The court can also include money damages you owe the landlord.
 - If the landlord wins, they can ask the Court Clerk for a “writ of eviction” right away. The “writ” is what tells the Sheriff to schedule your actual eviction. The sheriff must wait 10 days before carrying out the eviction.
 - If you deny what the landlord is claiming, the judge will likely set a trial date for you.
 - If the judge set the case for trial, they will ask both you and your landlord to put in writing why you feel you are right. Yours is called a “Grounds for Defense” and the landlord’s statement is a “Bill of Particulars”. This lists why they are seeking eviction and how much money they’re seeking. The judge will set a due date for these statements sometime before the trial. If you miss this due date, you can automatically lose your case, even without a trial.
- Sometimes, the judge may ask you and the landlord to step outside and try to work things out.
 - Make sure any agreement you reach with the landlord is in writing; never agree to anything verbally or sign anything unless you are 100% certain what you are agreeing to.
 - Don’t leave the court before checking in with your judge to make certain that your agreement is okay with them.
- When your case is heard, all witnesses are sworn in and will speak under oath.
 - Your landlord will go first, but you can question them (and any other witnesses).
 - After that, you and your witnesses will testify. Your landlord can then ask you questions.
 - At the end, you each can make a short closing argument, telling the judge why they should decide in your favor. After hearing everything, the judge will make a decision.
 - If you win, you get to stay in your home as if your case never happened. If you lose, your landlord can move forward with eviction. The losing party has 10 days to appeal the case.

What legal defenses can I use to avoid eviction?

- A lawyer is in the best position to tell you what might make a good defense, and it’s a good idea to seek their advice. Some possible defenses include:
 - The landlord didn’t give you proper notice and offer you a chance to fix things.
 - You dispute how much the landlord says you owe.
 - You’ve already paid what you owe or the landlord refused payment.
 - The landlord is charging you improper late fees or attorney fees.
- Your landlord can only charge you what’s included in your lease. Late fees are capped at 10% of your monthly rent or 10% of the total you owe – whichever is less.

- The landlord did not keep the property safe and habitable. If you use this, you have to prove that you notified the landlord *in writing* about your complaint. *To use this defense, you must pay your monthly rent into escrow with the court.* You can't use it simply because you're behind on payments.
- The landlord is only evicting you because you complained or used your legal rights. To use this, you have to prove that the landlord knows that you complained to them (like a copy of an email exchange), complained to a government agency, or joined a tenant's group before they sued for eviction.

What if I disagree with the judge's decision?

- If you don't agree with the judge's decision, you have 10 days to file for an appeal. This will move your case to a higher court.
- The higher court (Circuit Court) will hear your case brand new under a different judge. You can also ask for a jury trial in Circuit Court.
- To appeal your original case, you have to file a "Notice of Appeal" (form DC-475) in the General District Clerk's office. You must pay or get the court to waive the fees of the Circuit Court, and then pay or get the court to waive the Appeal Bond.
- If your case is because you haven't been paying rent, you cannot ask the court to waive your appeal bond. You must pay an appeal bond for the amount of the money judgement, and then continue paying your rent as it becomes due.

I live in subsidized housing. Do all of these rules still apply to me?

- For the most part, the eviction process is the same. If you're in federally subsidized housing, however, you have some additional protections.
- A federally subsidized landlord has to have a good reason to evict you. This means not paying rent, not obeying your lease rules, you broke the lease many times in many ways, you broke the law many times and many ways, you've damaged the property, or you're a danger to the health and safety of other tenants.
- If you have a Housing Choice Voucher, let the Public Housing Authority know immediately that you are unable to pay your rent. Give them copies of any communication between you and your landlord. If you end up being evicted, they have the right to terminate your voucher, and they often will, but you can request a grievance hearing.
 - If you think you're being evicted illegally or request a grievance hearing, you can present a defense.
 - You can have a lawyer with you, and you should at least speak to one.
 - If you lose your hearing and are evicted, you may lose your voucher.
- The landlord cannot make you pay anything that is not required under their "Housing Assistance Payment" contract or for nonpayment of the subsidized portion of your rent.
- If you're in the first year of your lease, the landlord can only evict you if it's your fault, like non-payment of rent. After the first year, the landlord can evict you for other reasons, like their desire to change the use of the property.
- In order to evict you, your landlord has to provide you with written notice, and that notice must include:
 - The reason you're being evicted. Only these reasons can be used to evict you.
 - The proposed date for ending your lease.
 - Informing you of your right to present defenses, and the legal aid phone number and website address.
- If you live in traditional public housing, the Public Housing Authority is your landlord. They still have to follow all of the federal regulations that handle your housing and the eviction process. If they evict

you, however, you may lose your opportunity to receive federally assisted low-income housing and barred from re-admission to subsidized housing for 5 or more years, depending on the circumstances.

- The Public Housing Authority can evict you for any of the reasons listed above for the Housing Choice Voucher program, and you have the same right to a grievance hearing. The window of opportunity for you is short, so pay close attention to the dates and please speak to an attorney.

How about for a mobile home?

- For the most part, the rules are the same as other housing, but there are some special rules for mobile home parks with 5 or more mobile homes.
- Park owners must provide residents with a written statement of tenant rights and responsibilities within one month of the effective date of the rental agreement. *The landlord cannot file or maintain an action against the tenant for any alleged lease violation until the landlord has provided the statement to the tenant.*
- If you lose your eviction case, you have 90 days from the date of the judge's order for possession to leave. You have a few choices:
 - You can simply move your mobile home or sell it. Your landlord cannot interfere with you efforts to sell or move the home, but they can have rules about where you put a "For Sale" sign and how large it can be.
 - You can rent your mobile home to someone else, but your landlord has to approve this new tenant. The new tenant would then pay you, but you would still be responsible for paying the landlord for the lot rent.
- If you don't pay, the company that finances your mobile home will get notice and will exercise their lien. They will be responsible for any lot charges for 90 days but can then repossess your mobile home. Your landlord will also have a lien on your home for the period that you don't pay rent, but they will be secondary to your lender.
- If you find a buyer for your mobile you have to give the landlord written notice that you've found someone and they want to continue to rent the lot.
 - The buyer will still have to meet the same qualifications that you did.
 - If they qualify, the landlord can't refuse the sale just because the mobile home is old, and they can't require any repairs that they haven't asked other mobile home tenants to make.
- If you (or a new owner) decide to move the mobile home, the landlord cannot charge you an "exit fee" but can charge you for any damages.
- If you simply abandon your mobile home, the landlord should send "notice of abandonment" and what is owed in rent and other charges to your lender and you. The lender has a lien on the mobile home, which you are responsible for, and they will have a certain amount of time to either remove or dispose of it.

I'm being evicted from a hotel.

- If you have lived in the hotel for 90 days or less and don't have a lease that lasts 90 days, the hotel can evict you by giving you 5 days' written notice. After the 5 days, the hotel can kick you out without taking you to court.
- If you have lived in the hotel for more than 90 days and it is your primary residence, the hotel must go through the court eviction process. If it's for non-payment of rent, they must give you 14-days' notice before taking you to court, and you can pay rent and any late fees or charges within those 14 days and avoid the eviction filing.

- If you cannot pay within those 14 days, your landlord can file an “unlawful detainer” and take you to court.
- Much like a home or apartment, your landlord must go through these processes, so it’s a wise idea to speak to an attorney.

Right of Redemption.

The "right of redemption" allows a tenant to pay everything they owe, including late fees and courts costs, to avoid an eviction judgment. Tenants are able to "redeem" any number of times, unless their landlord owns only 4 or fewer rental units, in which case tenants may only use this right once a year. Tenants have up to 48 hours before the scheduled eviction by the sheriff to exercise this right. Landlords are required to provide clear, specific language explaining the right of redemption that must be in *all* termination notices. A sample notice is available on the Department of Housing and Community Development's website [here](#).

What to Do If Your Landlord Gives You An Abandonment Notice

What is an abandonment notice?

An “abandonment notice” is a notice saying that you have abandoned your home and do not live there anymore. Your landlord can give you an abandonment notice if you have been gone from your home for more than seven days without notifying him.

What happens if I receive an abandonment notice?

If you do not contact your landlord in writing within seven days of getting the abandonment notice, the law allows the landlord to act as if you have abandoned your home and the landlord can end your lease without sending you any other notice.

If the landlord sends you an abandonment notice and you don’t send him something in writing telling him that you still live there, your landlord may try to use self-help to evict you.

What should I do if I receive an abandonment notice?

1. Within seven days, give your landlord a written notice stating “I have not abandoned this property. I intend to remain in occupancy.”
2. If your landlord tries to self-help evict you, you can still file a case against your landlord to try to stop the self-help eviction (called an “unlawful exclusion” case). It will be harder for you to win the case because the landlord will claim that you abandoned your home. You will need to show your court evidence that you clearly still live in the property.

Unlawful Exclusion or Self-Help Eviction

If a landlord takes the law into their own hands and evicts a tenant without going through the courts, the tenant can file an "Unlawful Exclusion" lawsuit to get back into the home. But this hasn't stopped some landlords from cutting off utilities or changing the locks to force tenants out. Tenants who have been unlawfully excluded will be able to recover \$5,000 in statutory damages or four months' rent, whichever is greater, in addition to actual damages and attorney's fees. Moreover, courts are required to schedule hearings for illegal lock out cases within five days, allowing tenants to get relief more quickly.

No Waiver of Rights Under Service Members Relief Act (SCRA)

Landlords will no longer be permitted to include lease provisions requiring tenants to waive their rights under the Servicemember Civil Relief Act (SCRA). Among other things, the SCRA provides active duty servicemembers the right to a 90-day delay of any eviction case filed against them. This often makes the

difference between whether the servicemember has a default eviction judgment against them (i.e., an eviction judgment entered without the servicemember being present) or a dismissal of the case.

Payment Plan Offer

Until July 1, 2022, landlords who own five or more rental dwelling units must allow the tenant to enter into a repayment agreement to pay off the balance owed. This provision will make it easier for tenants to get caught up on rent, allowing them to stay in their home.

VIRGINIA RENT RELIEF PROGRAM

If you have lived in your motel/hotel room for more than 90 days, or if you live in any other type of rental unit, you may qualify for rental assistance through the Virginia Rent Relief Program. The Virginia Rent Relief Program (RRP) was put in place in response to the corona virus pandemic. It provides funding for rent and late fees owed starting from April 1, 2020, and is available for up to 18 months of aid. You may apply for rental assistance at <https://www.dhcd.virginia.gov/rmrp>.

To apply for free legal assistance with a landlord/tenant issue, please contact Legal Aid Works® by calling (540) 371-1105 or get free legal advice from VPLC's Eviction Legal Helpline at (833)-NoEvict [(833) 663-8428].