



HANGER LAW

Navigating the COVID-19 Crisis

HOW PROPERTY MANAGERS WEATHER THE STORM

- What the recent changes mean for you and your clients
- Tips to avoid liability as a Realtor / Property Manager
- Tools and resources to protect your business

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HANGER LAW

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Association

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HRRA – PMLC – Hanger Law

Who we are...

Hanger Law: a full-service law firm, specializing in real estate and offering a full array of services for the entire Hampton Roads area. We have offices in Virginia Beach, Newport News, and Chesapeake.

Hanger Law exists to bring peace to the process and clarity where there is confusion for our clients. We are a proud affiliate of Hampton Roads Realtors Association. Our core values focus on Relationships, Responsiveness and Results.

John Kaptan - Hampton Roads resident for 16 years, veteran Naval Officer and Real Estate Agent. As an attorney I specialize in Real Estate contracts, sales, contract disputes, small business formation and growth, and Landlord-Tenant Law.

I love to equip Business Owners and Landlords who are on the front lines, taking risks, providing jobs and needed services to the community.



Recent Changes

This is mostly Bad News for PMs and Landlords.

- 2 Areas of change
 - **Virginia**
 - Executive Orders
 - Judicial Emergency
 - Local Guidelines
 - **Federal**
 - CARES ACT

- Lack of Certainty – Fast moving changes bypassing normal processes
- Lack of Coordination with Industry – Far from smooth, seamless roll out
- Lack of Guidance on Construction and Interpretation



Knowns / Unknowns

- **Virginia** – Where Real Estate Law traditionally originates
- **Temporary Emergency** (Judicial: currently March 16 – April 26, Executive, through June 10, both subject to possible extension)
 - Court closures
 - Moratorium on evictions
 - Business Aid (EIDL)
- “The court shall continue all civil, traffic and criminal matters, including jury trials, except for emergency and other matters as provided in this Order. For example, routine proceedings, including but not limited to non-emergency: warrants in debt, unlawful detainers, issuance of garnishments and writs of eviction shall be continued during the period this Order is in effect.”

(Virginia Supreme Court Emergency Declaration linked below)



The Federal CARES Act Went into effect March 27, 2020 What does it mean for you and clients?

Federal Eviction Moratorium

1. Restricts the filing of new evictions on **ALL “covered dwellings”** for non-payment of rent for **120 Days from March 27, 2020 . (July 25, 2020)** Restricts **ANY** and **ALL** making or causing to be made, any filing to initiate legal action to recover the possession of the covered dwelling due to non-payment of rent for 120 days. **(July 25, 2020)**

In Simple Terms – What does this mean?

- You may **NOT** start the process or file for an unlawful detainer (eviction) due to non-payment of rent until after this timeframe. **(July 25, 2020)**
- You may **NOT file NOW** post dating for 120 days for non-payment of rent.

2. Additional restrictions for a “Covered Dwelling”.

- May **NOT** issue notices to vacate until after the moratorium period. **(July 25, 2020)**
- At the end of the moratorium, you may not evict a tenant except with 30 days notice.
- You may **NOT** post pay or quit noticed or notices to vacate due to non-payment of rent.
- You may **NOT** charge any late fees, penalties or other charges due to non-payment of rent.



Questions?

The Federal CARES Act

What is a “Covered Dwelling”

The eviction moratorium applies to “covered dwellings,” which include those dwelling on or in “covered properties.”

“Covered Dwellings” and “Covered Properties” include all of the following:

A dwelling that is occupied by tenants pursuant to a residential lease, with or without a lease that is terminable under state law. Virginia Residential Landlord and Tenant Act (VRLTA)

- All Properties or Dwellings with any Federal Backed Mortgage Loan (1-4 units) including but not limited to, HUD, Fannie Mae, Freddie Mac, USDA, VHDA, VA, Dept. of Agriculture and Department of Treasury.
- Public Housing (42 U.S.C. 1437d)
- Section 8 Housing Choice Voucher Program (42 U.S.C 1437f)
- Section 8 Project-based housing (42U.S.C. 1437f)
- Section 202 housing for the elderly (42 U.S.C 1701q)
- Section 811 housing for people with disabilities (42 U.S.C. 8013)
- Section 236 Multifamily rental housing (12 U.S.C. 1715z-1)
- Rural Housing Voucher Program (under 542 of the Housing Act of 1949)
- Housing Voucher and Program of the (Violence Against Women Act of 1994)
- Housing Opportunities for People with AIDS . (HOPWA) (42 U.S.C 12901)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S,C 42)
- Properties falling under the Fair Housing Act.

Generally meaning-Apartment complexes, nursing homes, group homes, mobile homes group homes, seasonal facilities, trailer parks, condos, and some short term rentals.

In Essence Almost ALL Mortgage Loans are Federally Backed.

Questions?



The Federal CARES Act

What are the legal options when tenants can't pay rent?

The CARES Act does not address how landlords can respond to missed payments after the moratorium ends. While the act bars landlords from *charging* late fees and other penalties because of a tenant's nonpayment during the 120 days, whether or not late fees and interest on rental payments are prohibited from *accruing* during the grace period and being charged after it ends is unclear*

Second, how will people know they are covered? While some renters living in federally assisted units may know they are assisted, *unassisted* renters are unlikely to know the mortgage status of their unit. Property owners may know if their mortgages are federally insured because they must have applied for the insurance. However, owners might not know whether Fannie Mae or Freddie Mac subsequently purchased their loans from their lenders because owners are not parties to these transactions. The opacity of this information raises questions about enforcement of the protections*.

*Congressional Research Service

Know your loan | Know your renters



Do not, under any circumstances, attempt a forced eviction: the legal exposure and liability in Virginia is enormous!

How to mitigate losses when tenants cannot pay rent.

- Settlement Arrangement in writing for past due amounts.

(Make sure you get approval in writing from the landlord before negotiating with a tenant.)

- Drafted and signed by landlord, tenant and property manager, including all terms of repayment for past due rents owed.

(Make sure all parties understand the terms and have an attorney draft or explain to clients before signing.)

- Understand the Tenant is under no obligation to accept any new terms of a lease including payment arrangements.



Be cautious to not provide legal advice.

Our office is open and happy to provide consultations to assist you and your clients.

Tenants Rights and Obligations

- Tenant is still obligated to pay rent and abide by lease/contract agreement.
- Tenant is still obligated to report emergencies and needed repairs
- Tenant is still obligated to allow access to the property for emergency repairs. Follow all state and local guidelines or CDC recommendations for COVID- 19
- Tenant must still follow lease and NOT be in breach for pets, nuisance, domestic disturbances, etc.



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Landlords Rights and Obligations

- The Owner/Landlord has legal exposure for any required / emergency repairs under the duty to provide a fit and habitable home to their tenant. This duty remains, regardless if the tenant has paid rent.
- The Owner/Landlord still has the right to enter the property for repairs. Limit exposure for tenant and follow local and state guidelines and CDC recommendations.
- Communication with Landlords and Tenants should be **IN WRITING** – Requests, modifications, offers, status updates – all should be in writing. Should you need some language for a posting on doors for tenant communication with tenants regarding rent we are here to help.



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Tips to avoiding liability as a Realtor/Property Manager

- Make sure you get approval from a landlord (in writing) before any offers or negotiations with tenants on delinquent rent.
- Communications – IN WRITING
- Do not post ANY 5 day pay or quit notices and do NOT charge late fees for delinquent rent. Should you need language for a posting on doors or communications with tenants regarding rent we are here to help.
- Showings/ Open Houses – Follow the Virginia Executive order that is currently in effect until June 10. Limit exposure for buyers and seller. Follow local and state guidelines and CDC recommendations for limited exposure due to COVID 19. Look to your leaders in HRRRA for guidelines and assistance.
- Short term rentals / AirBnB – Know Virginia status and laws.



The Federal CARES Act

Selling/Buying Home with Tenants: Now What?

Property sale does not change the terms of the lease. Similar to easements or other covenants that “run with the land,” **leases are tied to the land/property** and not the owner. Thus, the lease stays “attached” to the home, even when ownership switches hands.

Important for prospective buyers to understand that **the lease in place before they buy the property remains in effect even after closing.**

You **cannot** legally raise the rent, modify the clauses or lease agreement or terminate the lease before the end of the lease term just because you’re the new owner.



Potential additional laws/phases of the CARES Act and New Laws that go into effect in July 2020.

As we know this is a unique and fluid situation. New laws and bills are being passed weekly regarding the COVID-19 Crisis. We expect additional guidance and potentially further relief.

Hanger Law is open and ready to assist YOU, your Landlords, Clients, Sellers and Buyers through this Financial Crisis. We monitor the new laws daily and are ready to provide you guidance as this fluid situation unravels.

If you are not aware there are laws that will go into effect in July 2020. These new laws will effect many aspects of Tenant/Landlord relations and our jobs.

We will have a seminar in the future regarding these new upcoming laws. Stay tuned.



The Federal CARES Act

Tools and Resources to protect your business.

Businesses impacted by COVID-19 can also request to defer the payment of state sales tax due tomorrow, March 20, 2020, for 30 days. When granted, businesses will be able to file no later than April 20, 2020 with a waiver of any penalties.

The Governor has requested that the Department of Taxation to extend the due date of payment of Virginia individual and corporate income taxes. While filing deadlines remain the same, the due date for individual and corporate income tax will now be June 1, 2020. Please note that interest will still accrue, so taxpayers who are able to pay by the original deadlines should do so.



The Federal CARES Act

Tools and Resources to protect your business.

Low-interest federal disaster loans of up to \$2 million from the SBA to pay fixed debts, payroll, accounts payable, and other expenses. To submit a loan application through the SBA Economic Injury Disaster Loan program, please visit disasterloan.sba.gov/ela/.

Paycheck Protection Program Loans – available for qualifying businesses

Unemployment benefits for 1099 employees



How we can help you with your Landlords, Sellers, and other clients.

Hanger Law can help...

- Review your lease agreement.
- Review your property management agreement.
- Review your posting notices for tenants.
- Help guide/advise you regarding tenants not paying rent.
- Help guide/advise landlords who are not being paid rent.
- Help in negotiations and out of court settlements for past due rents.
- Help guide you regarding needed repairs and requested repairs from tenants.
- Help guide your clients through the Stay on Foreclosures
- Help guide your clients through Foreclosure Defense, loan modifications or short sales
- Help guide your landlords with collections of back due rent

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How we can help you with your Business

We know that most Realtors are 1099 subcontractors.

-Talk to us about setting your business up as an LLC.

Questions?

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Virginia Legal Resources

[courts.state.va.us/declaration_of_judicial_emergency.](https://courts.state.va.us/declaration_of_judicial_emergency)

courts.state.va.us/news/items/covid_19

[courts.state.va.us scv order extending declaration of judicial emergency](https://courts.state.va.us/scv_order_extending_declaration_of_judicial_emergency)



Add'l Professional Resources

viriniarealtors.org/coronavirus

[Property Manager-rent-alteration-form](#)

[PM-rent-alteration-request.pdf](#)



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Disclaimer: This presentation is intended for informational purposes. Nothing contained herein should be construed as legal advice nor otherwise forming an attorney-client relationship. Please call Hanger Law for Individual consultation and up to the minute legal counsel. We look forward to serving you.