



CENTRAL VIRGINIA  
LEGAL AID SOCIETY  
[www.cvlas.org](http://www.cvlas.org)

**REPLY TO:**

101 W. Broad St., Suite #101  
P.O. Box 12206  
Richmond, Virginia 23241  
804-648-1012 or 800-868-1012  
Fax: 804-649-8794  
[marty@cvlas.org](mailto:marty@cvlas.org)

229 North Sycamore Street  
Petersburg, Virginia 23803  
804-862-1100 or 800-868-1012  
Fax: 804-861-4311

1000 Preston Avenue, Suite B  
Charlottesville, Virginia 22903  
434-296-8851 or 800-390-9983  
Fax: 434-296-5731

**COMMENTS TO VIRGINIA HOUSING COMMISSION  
on Improvements to the State Pilot Eviction Diversion Program,  
Code of Virginia §§55.1-1260 - 55.1-1262, based on  
Lessons Learned from the Richmond Eviction Diversion Program  
October 29, 2019**

Good morning. My name is Martin Wegbreit, Director of Litigation at Central Virginia Legal Aid Society. I have some brief comments to the Virginia Housing Commission on improvements to the state pilot Eviction Division Program based on lessons learned from the Richmond Eviction Diversion Program.

(1) A legal remedy that is unknown is no better than a legal remedy that does not exist.

On July 1, 2020, Richmond, Petersburg, Hampton and Danville will start the state pilot Eviction Diversion Program. Tenants who face eviction due to nonpayment of rent and meet program rules will be able to enter a payment plan to avoid eviction. They will make four monthly payments of one-quarter of the rent arrears and pay current rent as due.

Unlike Richmond's current voluntary program, the state law says "the court shall direct an eligible tenant . . . and his landlord to participate." However, the law has no method of allowing a court to identify and notify these parties. This is not fair. Richmond solved this problem by attaching an information sheet to each eviction lawsuit filed and given to the landlord, and given for service on the tenant. Results have been instant and dramatic, with a dozen or more calls every day. A similar information sheet should be required in Petersburg,

Hampton and Danville.

(2) Tenants should not come to court with two strikes on them. To be in the program, the tenant must have a good rent paying record in the past 12 months. This means late no more than three times. However, the law does not say the month when that 12 month look back period starts. If that period starts with the month of the first court date, which almost always is a month after the lawsuit was filed, the tenant arrives in court with two strikes. The tenant was late the month the lawsuit was filed, and probably is late the month of the first court date. This is not fair. A stated purpose of the law is "reducing the number of evictions," especially after experiencing an adverse financial event. That adverse financial event, causing late payment the month the lawsuit was filed and the month of the first court date, should not be used to deny entry to the program. The 12 month look back period should start the month before the lawsuit was filed.

(3) A late payment should depend on payments made each month, not how payments get applied. Everyone agrees that only tenants with good rent payment records should be eligible. However, the law does not define late payment. Most landlords apply a current rent payment to a prior month that went unpaid. Under this practice, once a tenant has an unpaid balance, every payment is considered late until the tenant gets to zero balance. This is not fair. If a tenant misses August but pays September and October, that is one late payment, not three late payments. Late payment should mean that within a given month, the full rent was not paid, even if that rent was applied to a past due month.

These three simple changes will clarify many of the questions which have arisen over the past four weeks in the Richmond Eviction Diversion Program. I urge you to give them your serious consideration. Thank you.