July 20, 2016

From: Steve Scott

To: Columbia Apartment Association

Re: House Bill 1862

House Bill 1862, passed by the 2016 General Assembly and signed into law by the Governor, finally corrects some lingering issues from the 2014 changes to landlord-tenant statutes and makes some other changes to landlord-tenant law. The new law will become effective Aug. 28, 2016.

The big issue that was not covered in the 2014 legislation when the right to a trial *de novo* (new trial) was eliminated in eviction cases was how soon after entry of a judgment for possession a landlord could request issuance of an execution for possession. The old rule was that the execution could not be requested until the end of the 10-day period allowed for filing a request for a trial *de novo*, but the elimination of trials de novo without specifying how soon an execution can be issued led to uncertainty about the timing of executions.

Under House Bill 1862, it is now specified for both unlawful detainer cases and rent-and-possession cases that an execution for possession can now be requested after the expiration of a 10-day waiting period. The result, therefore, is the same as the old law.

However, as I interpret House Bill 1862, it also makes a change to the old rule that a tenant could "pay and stay" in a rent-and-possession case if the tenant paid the rent then due plus court costs by midnight on the date a judgment for possession was issued. Now, I believe the tenant can pay the amount of the judgment and be allowed to stay if the payment is made within 10 days after the judgment is entered.

House Bill 1862 also makes some changes to the security deposit rules, as follows:

1. Unless the landlord is licensed under and subject to the requirements of Chapter 339 of the statutes:

    a. All security deposits must be held in a bank, credit union or other depository institution insured by an agency of the federal government.

    b. The landlord must establish a trust to hold security deposits, and the account must be in the name of the trustee of the trust.

    c. Security deposits may not be commingled with other funds of the landlord. This means they must be held in a separate account containing only security deposits.

    d. Any interest earned on the account containing security deposits becomes the property of the landlord.

2. If the landlord is licensed under and subject to the requirements of Chapter 339 of the statutes, in lieu of complying with the foregoing, the landlord:

   a. May maintain security deposits in a bank, credit union, financial or depository institution account.

   b. May not commingle security deposits with other funds of the landlord except as provided in Sec. 339.105 of the statutes (which deals with broker's escrow accounts and permits monies to be deposited to cover service charges).

3. Overruling a portion of a recent court decision, it will be permissible to include a clause in the lease specifying an amount that will charged against the security deposit for routine carpet cleaning, so long as the lease also notifies the tenant that there may be an additional deduction from the security deposit if more expensive carpet cleaning is required because of conditions beyond ordinary wear and tear. The carpet cleaning charge against the security deposit cannot exceed the actual expense, and a receipt for the carpet cleaning must be provided to the tenant at the same time as the security deposit accounting is due.