

HOUSE BILL NO. 614

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Bourne)

A BILL to amend and reenact §§ 8.01-129 and 16.1-107 of the Code of Virginia, relating to requirement for appeals bond; indigent parties; appeal of unlawful detainer.

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-129 and 16.1-107 of the Code of Virginia are amended and reenacted as follows:****§ 8.01-129. Appeal from judgment of general district court.**

A. An appeal shall lie from the judgment of a general district court, in any proceeding under this article, to the circuit court in the same manner and with like effect and upon like security as appeals taken under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal shall be taken within 10 days and the security approved by the court from which the appeal is taken. Notwithstanding the provisions of § 16.1-106 et seq., the bond shall be posted and the writ tax paid within 10 days of the date of the judgment.

B. In any unlawful detainer case filed under § 8.01-126, if a judge grants the plaintiff a judgment for possession of the premises, upon request of the plaintiff, the judge shall further order that the writ of eviction issue immediately upon entry of judgment for possession. In such case, the clerk shall deliver the writ of eviction to the sheriff, who shall then, at least 72 hours prior to execution of such writ, serve notice of intent to execute the writ, including the date and time of eviction, as provided in § 8.01-470. In no case, however, shall the sheriff evict the defendant from the dwelling unit prior to the expiration of the defendant's 10-day appeal period. If the defendant perfects an appeal, the sheriff shall return the writ to the clerk who issued it.

~~When~~ In accordance with the provisions of § 16.1-107, when the appeal is taken by the defendant,
he shall ~~be required to give security also for all rent which has accrued and may accrue upon the premises,~~

but for not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered, including an award of attorney fees, if any. No indigent person shall be required to post an appeal bond. Trial by jury shall be had upon application of any party. For purposes of this subsection, "indigent" means that the defendant has been determined to be indigent pursuant to the guidelines set forth in § 19.2-159.

§ 16.1-107. Requirements for appeal.

A. No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Either such amount shall include the award of attorney fees, if any. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129. However, no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2. In a case where a defendant with indemnity coverage through a policy of liability insurance appeals, the bond required by this section shall not exceed the amount of the judgment that is covered by a policy of indemnity coverage.

B. In all civil cases, ~~except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents,~~ no indigent person shall be required to post an appeal bond. ~~In cases of unlawful detainer against a former owner based upon a foreclosure against that owner, a person who has been determined to be indigent pursuant to the guidelines set forth in § 19.2-159 shall post an appeal bond within 30 days from the date of judgment.~~

C. In cases of unlawful detainer for a residential dwelling unit, notwithstanding the provisions of § 8.01-129, an appeal bond shall be posted by the defendant with payment into the general district court

in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. If such amount is not so paid, any such appeal shall not be perfected as a matter of law. No indigent person shall be required to post an appeal bond. Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court. Any funds held in a court account shall be released to the plaintiff without further hearing or proceeding of the court unless the defendant has filed a motion to retain some or all of such funds and the court, after a hearing, enters an order finding that the defendant is likely to succeed on the merits of a counterclaim alleging money damages against the plaintiff, in which case funds shall be held by order of such court.

D. If such bond is furnished by or on behalf of any party against whom judgment has been rendered for money or property or both, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against such party on appeal, and for the payment of all costs and damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery except for costs, the bond shall be conditioned for the payment of such costs and damages as may be awarded against him on the appeal.

E. In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.

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