

HOUSE BILL NO. 86

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Hope)

A BILL to amend and reenact §§ 8.01-126 and 8.01-454 of the Code of Virginia, relating to summons for unlawful detainer; hearing date; amendments to amount due; subsequent filings.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-126 and 8.01-454 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.**

A. For the purposes of this section, "termination notice" means a notice given under § 55.1-1245 or other notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises.

B. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable, but in no event later than 30 days after the date of the

27 filing. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of  
28 filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court.  
29 Such summons shall be served at least 10 days before the return day thereof.

30 C. Any summons issued pursuant to the provisions of this section shall contain a notice to the  
31 tenant that, pursuant to the provisions of § 18.2-465.1, it is unlawful for his employer to discharge him  
32 from employment or take any adverse personnel action against him as a result of his absence from  
33 employment due to appearing at any initial or subsequent hearing on such summons, provided that he has  
34 given reasonable notice of such hearing to his employer.

35 D. ~~Notwithstanding any other rule of court or provision of law to the contrary, the~~ The court shall  
36 not enter an order of possession unless the plaintiff, the plaintiff's attorney, an agent of the landlord, or the  
37 managing agent has presented a copy of a proper termination notice issued to the defendant and the court  
38 has submitted such notice into evidence.

39 E. The plaintiff in an unlawful detainer case may submit into evidence a photocopy of a properly  
40 executed paper document or paper printout of an electronically stored document including a copy of the  
41 original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that  
42 the copy of such document is a true and accurate copy of the original lease. An attorney or agent of the  
43 landlord or managing agent may present such affidavit into evidence. If the defendant fails to appear in  
44 court, the plaintiff may introduce into evidence by an affidavit or sworn testimony a statement of the  
45 amount of outstanding rent, late charges, attorney fees, and any other amounts due and owing as of the  
46 date of the hearing, and any payments made by or on behalf of the defendant as of the hearing date.

47 E. ~~F. 1. Notwithstanding any other rule of court or provision of law to the contrary, when the~~  
48 ~~defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may submit~~  
49 ~~into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late~~  
50 ~~charges, attorney fees, and any other charges or damages due as of the date of the hearing. The plaintiff~~  
51 ~~or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a~~  
52 ~~variance reducing the amount due the plaintiff as of the day of the hearing. The plaintiff may include on~~  
53 the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing

54 and the approximate amount the defendant may owe as of the date of the hearing if the defendant made  
55 no payments prior to the date of such hearing.

56 If, upon request of the plaintiff, the court finds that (i) the evidence accurately sets forth the amount  
57 due and owing to the plaintiff and (ii) the plaintiff included on the summons for unlawful detainer a request  
58 for all amounts due and owing as of the date of the hearing, the court shall permit the plaintiff to amend  
59 the amount requested on the summons for unlawful detainer. If, however, the plaintiff has not included on  
60 the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing,  
61 the court may permit the plaintiff to amend the amount requested on the summons for unlawful detainer  
62 upon finding that (a) the evidence accurately sets forth the amount due and owing to the plaintiff, (b) the  
63 plaintiff provided the defendant with a separate written notice of additional amounts due and owing as of  
64 the date of the hearing and of the plaintiff's intent to amend the amount requested on the summons, and  
65 (c) the defendant had the opportunity at court to object to any additional amounts claimed.

66 ~~2.-a. If the unlawful detainer summons served upon the defendant requests judgment for all~~  
67 ~~amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on~~  
68 ~~the summons for unlawful detainer filed in court in accordance with the evidence and in accordance with~~  
69 ~~the amounts contracted for in the rental agreement and shall enter a judgment for such amount due as of~~  
70 ~~the date of the hearing in addition to entering an order of possession for the premises. Notwithstanding~~  
71 ~~any rule of court or provision of law to the contrary, no order of possession shall be entered unless the~~  
72 ~~plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court~~  
73 ~~admits into evidence.~~

74 ~~b. Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the~~  
75 ~~amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of~~  
76 ~~the date of the hearing. If additional amounts become due and owing prior to the final disposition of a~~  
77 ~~pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to include~~  
78 ~~such additional amounts. If the plaintiff requests to amend the amount alleged to be due and owing in an~~  
79 ~~unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such~~  
80 ~~plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for~~

81 ~~such additional amounts if such additional amounts could have been included in such amendment. If~~  
82 ~~another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein~~  
83 ~~shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during~~  
84 ~~the pendency of an unlawful detainer for nonpayment of rent. If the plaintiff requests on the summons for~~  
85 ~~unlawful detainer all amounts due and owing as of the date of the hearing or if the court grants an~~  
86 ~~amendment of the amounts requested on the summons for unlawful detainer, the plaintiff shall not~~  
87 ~~subsequently file additional unlawful detainers or warrants in debt against the defendant for such~~  
88 ~~additional amounts if those amounts could have been included in amended amount. If the plaintiff files~~  
89 ~~another unlawful detainer or warrant in debt against the defendant prior to resolution of the prior unlawful~~  
90 ~~detainer, the court shall dismiss any such subsequent unlawful detainer or warrant in debt. Nothing in this~~  
91 ~~section shall preclude the plaintiff from filing an unlawful detainer for a non-rent lease violation during~~  
92 ~~the pendency of an unlawful detainer for nonpayment of rent or from filing a warrant in debt for amounts~~  
93 ~~unrelated to the unlawful detainer against the defendant.~~

94 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement  
95 or lease provides that rent is due and payable on the first of the month in advance for the entire month, at  
96 the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing  
97 shall include the rent due for the entire month in which the hearing is held, and rent shall not be prorated  
98 as of the actual court date. Otherwise, the rent shall be prorated as of the date of the hearing. However,  
99 nothing herein shall be construed to permit a landlord to collect rent in excess of the amount stated in such  
100 rental agreement or lease. If a money judgment has been granted for the amount due for the month of the  
101 hearing pursuant to this section and the landlord re-rents such dwelling unit and receives rent from a new  
102 tenant prior to the end of such month, the landlord is required to reflect the applicable portion of the  
103 judgment as satisfied pursuant to § 16.1-94.01.

104 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner  
105 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such  
106 tenancy may be terminated by a written termination notice from the successor owner given to such tenant  
107 at least three days prior to the effective date of termination. Upon the expiration of the three-day period,

108 the successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for  
109 payment of fair market rental from the date of such foreclosure until the date the tenant vacates the  
110 dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

111 **§ 8.01-454. Judgment, when satisfied, to be so noted by creditor.**

112 In all cases in which satisfaction of any judgment so docketed is made, which is not required to be  
113 certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor, himself, or by his  
114 agent or attorney, to cause such satisfaction by the defendant, and if there is more than one defendant, by  
115 which defendant it was satisfied, to be entered within 30 days after the same is made, on such judgment  
116 docket. If the judgment has not been docketed, then the entry shall be made on the execution book in the  
117 office of the clerk from which the execution issued. For any failure to do so within 90 days, or after 10  
118 days' notice to do so by the judgment debtor or his agent or attorney, the judgment creditor shall be liable  
119 to a fine of \$100 and shall pay the filing cost of the release. The entry of satisfaction shall be signed by  
120 the creditor or his duly authorized attorney or other agent and be attested by the clerk in whose office the  
121 judgment is docketed, or when not docketed, by the clerk from whose office the execution issued;  
122 however, the cost of the release shall be paid by the judgment debtor. For any money judgment marked  
123 as satisfied pursuant to this section, nothing herein shall satisfy an unexecuted order of possession entered  
124 pursuant to § 8.01-126, provided that (i) the time period for issuing writs of eviction in unlawful entry and  
125 detainer provided by § 8.01-471 has not lapsed and (ii) the defendant has not exercised his right of  
126 redemption in accordance with § 55.1-1250.

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