

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 court shall not
36 enter an order of possession unless the plaintiff, plaintiff's attorney, or agent has presented a copy of a
37 proper termination notice issued to the defendant and the court has entered such notice into evidence.

38 E. Notwithstanding any rule of court or provision of law to the contrary, the plaintiff, plaintiff's
39 attorney, or agent 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, plaintiff's attorney, or agent may introduce into evidence by an affidavit or sworn
45 testimony a statement of the amount of outstanding rent, late charges, attorney fees, costs, and any other
46 charges or damages as contracted for in the rental agreement that are due and owing as of the date of the
47 hearing. The plaintiff, plaintiff's attorney, or agent shall advise the court of any payments made by or on
48 behalf of the defendant that result in a reduction of the amount due and owing to the plaintiff.

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

54 ~~variance reducing the amount due the plaintiff as of the day of the hearing. The plaintiff may include on~~
55 ~~the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing~~
56 ~~and the approximate amount the defendant may owe as of the date of the hearing if the defendant makes~~
57 ~~no payments prior to the date of such hearing. Notwithstanding any rule of court or provision of law to~~
58 ~~the contrary, if such request is made on the summons for unlawful detainer, the court shall permit~~
59 ~~amendment of the amount requested on the summons for unlawful detainer filed in court in accordance~~
60 ~~with the evidence and the amounts contracted for in the rental agreement. If the plaintiff makes such a~~
61 ~~request and additional amounts become due and owing prior to the final disposition of a pending unlawful~~
62 ~~detainer, a plaintiff may amend the amount in an unlawful detainer to request all amounts due and owing~~
63 ~~as of the date of final disposition.~~

64 If, however, the plaintiff has not included on the summons for unlawful detainer a request for all
65 amounts due and owing as of the date of the hearing, the court may permit the plaintiff to amend the
66 amount requested on the summons for unlawful detainer upon finding that (i) the evidence accurately sets
67 forth the amount due and owing to the plaintiff, (ii) the plaintiff provided the defendant with a separate
68 written notice of additional amounts due and owing as of the date of the hearing and of the plaintiff's intent
69 to amend the amount requested on the summons, and (iii) the defendant had the opportunity at court to
70 object to any additional amounts claimed.

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

79 ~~b. Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the~~
80 ~~amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of~~

81 ~~the date of the hearing. If additional amounts become due and owing prior to the final disposition of a~~
82 ~~pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to include~~
83 ~~such additional amounts. If the plaintiff requests to amend the amount alleged to be due and owing in an~~
84 ~~unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such~~
85 ~~plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for~~
86 ~~such additional amounts if such additional amounts could have been included in such amendment. If~~
87 ~~another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein~~
88 ~~shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during~~
89 ~~the pendency of an unlawful detainer for nonpayment of rent. If the plaintiff requests on the summons for~~
90 ~~unlawful detainer all amounts due and owing as of the date of the hearing or if the court grants an~~
91 ~~amendment of the amounts requested on the summons for unlawful detainer, the plaintiff shall not~~
92 ~~subsequently file additional unlawful detainers or warrants in debt against the defendant for such~~
93 ~~additional amounts if those amounts could have been included in the amended amount. Any such~~
94 ~~subsequent unlawful detainers or warrants in debt filed for amounts that were included in the amended~~
95 ~~amount shall be dismissed. Nothing in this section shall preclude the plaintiff from filing an unlawful~~
96 ~~detainer for a non-rent lease violation during the pendency of an unlawful detainer for nonpayment of rent~~
97 ~~or from filing a warrant in debt for amounts unrelated to the unlawful detainer against the defendant.~~

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

108 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner
 109 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such
 110 tenancy may be terminated by a written termination notice from the successor owner given to such tenant
 111 at least three days prior to the effective date of termination. Upon the expiration of the three-day period,
 112 the successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for
 113 payment of fair market rental from the date of such foreclosure until the date the tenant vacates the
 114 dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

115 **§ 8.01-454. Judgment, when satisfied, to be so noted by creditor.**

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

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