

HOUSE BILL NO. 1482

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Leftwich)

A BILL to amend and reenact § 8.01-126 of the Code of Virginia, relating to unlawful detainer actions; no rental agreement between owner and occupant.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-126 of the Code of Virginia is 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. If a summons for unlawful
30 detainer is filed by an owner of a residential single family dwelling unit in the Commonwealth and the
31 court finds based upon the evidence that (i) no rental agreement exists between the owner and the
32 occupant; (ii) the occupant occupies such dwelling unit without permission of such owner; and (iii) the
33 owner has given such occupant a written notice to vacate such dwelling unit at least 72 hours prior to the
34 date of filing, an emergency hearing on such summons shall occur as soon as practicable, but not more
35 than 14 days from the date of filing. If the case cannot be heard within 14 days from the date of filing, the
36 emergency hearing shall be held as soon as practicable, but in no event later than 30 days after the date of
37 the filing.

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

43 D. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an
44 unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or
45 paper printout of an electronically stored document including a copy of the original lease or other
46 documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such
47 document is a true and accurate copy of the original lease. An attorney or agent of the landlord or managing
48 agent may present such affidavit into evidence.

49 E. 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.

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

63 b. Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the
64 amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of
65 the date of the hearing. If additional amounts become due and owing prior to the final disposition of a
66 pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to include
67 such additional amounts. If the plaintiff requests to amend the amount alleged to be due and owing in an
68 unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such
69 plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for
70 such additional amounts if such additional amounts could have been included in such amendment. If
71 another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein
72 shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during
73 the pendency of an unlawful detainer for nonpayment of rent.

74 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement
75 or lease provides that rent is due and payable on the first of the month in advance for the entire month, at
76 the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing
77 shall include the rent due for the entire month in which the hearing is held, and rent shall not be prorated
78 as of the actual court date. Otherwise, the rent shall be prorated as of the date of the hearing. However,
79 nothing herein shall be construed to permit a landlord to collect rent in excess of the amount stated in such

80 rental agreement or lease. If a money judgment has been granted for the amount due for the month of the
81 hearing pursuant to this section and the landlord re-rents such dwelling unit and receives rent from a new
82 tenant prior to the end of such month, the landlord is required to reflect the applicable portion of the
83 judgment as satisfied pursuant to § 16.1-94.01.

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

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