VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 222

An Act to amend and reenact § 8.01-470 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-237.1 and to amend the Code of Virginia by adding in Article 5 of Chapter 13.2 of Title 55 a section numbered 55-248.38:2, relating to authority of sheriffs and landlords to store and sell personal property removed from residential premises.

[H 2141]

Approved March 14, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-470 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-237.1 and that the Code of Virginia is amended by adding in Article 5 of Chapter 13.2 of Title 55 a section numbered 55-248.38:2 as follows:

§ 8.01-470. Writs on judgments for specific property.

On a judgment for the recovery of specific property, real or personal, a writ of possession may issue for the specific property, which shall conform to the judgment as to the description of the property and the estate, title and interest recovered, and there may also be issued a writ of fieri facias for the damages or profits and costs. In cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of possession has been delivered to be executed shall, at least seventy-two hours before execution, serve notice of intent to execute, including the date and time of execution, *as well as the rights afforded to tenants in §§ 55-237.1 and 55-248.38:2,* on the defendant in accordance with § 8.01-296, with a copy of the writ attached. The execution of the writ of possession by the sheriff should occur within fifteen calendar days from the date the writ of possession is received by the sheriff, or as soon as practicable thereafter, but in no event later than thirty days from the date the writ of possession is issued. In cases of unlawful entry and detainer and of ejectment, whenever the officer to whom a writ of possession has been delivered to be executed finds the premises locked, he may, after declaring at the door the cause of his coming and demanding to have the door opened, employ reasonable and necessary force to break and enter the door and put the plaintiff in possession. And an officer having a writ of possession for specific personal property, if he finds locked or fastened the building or place wherein he has reasonable cause to believe the property specified in the writ is located, may in the daytime, after notice to the defendant, his agent or bailee, break and enter such building or place for the purpose of executing such writ.

§ 55-237.1. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a residential premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the premises in order to restore such premises to the person entitled thereto, the sheriff shall cause such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the twenty-four hour period after eviction. Upon the expiration of the twenty-four hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, the sheriff shall cause such personal property to be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the twenty-four hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided herein. During that twenty-four hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the loss of such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive relief and such other relief as may be provided by law.

Any property remaining in the landlord's storage area upon the expiration of the twenty-four hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.

§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall cause such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the twenty-four hour period after eviction. Upon the expiration of the twenty-four hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, the sheriff shall cause such personal property to be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the twenty-four hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that twenty-four hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the twenty-four hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.