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HOUSE BILL NO. 1025

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 8.01-156, 55-237.1 and 55-248.38:2 of the Code of Virginia, relating to a sheriff's duty to remove property pursuant to an ejectment proceeding.

Patron—Hurt

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-156, 55-237.1 and 55-248.38:2 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-156. Authority of sheriffs, etc., to store and sell personal property removed from premises; recovery of possession by owner; disposition or sale.

In any county or city, when personal property is removed from premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from premises in order to restore such premises to the person entitled thereto, the sheriff shall ~~cause~~ *oversee the removal of* such personal property ~~to and it shall~~ be placed in a storage area designated by the governing body of the county or city if such an area has been so designated, or, in the case of a manufactured home, at the request of the owner of the real property, to be placed into a storage area designated by the owner of the real property which may be the manufactured home lot or other location within the manufactured home park, unless the owner of such personal property then and there removes it from the public way. The sheriff and the owner of the real property shall not have any liability for the loss of any such manufactured home remaining on the manufactured home lot, *nor shall they have any liability for the loss of any removed personal property.*

The owner, before obtaining possession of such personal property so placed in a storage area ~~by the sheriff~~ shall pay to the parties entitled thereto the reasonable and necessary costs incidental to such removal and storage. Should such owner fail or refuse to pay such costs within 30 days from the date of placing the property in storage, the sheriff shall, after due notice to the owner and holders of liens of record, dispose of the property by publicly advertised public sale. The proceeds from such sale shall be used to pay all costs of removal, storage, and sale, all fees and liens, and the balance of such funds shall be paid to the person entitled thereto. Should the cost of removal and storage exceed the proceeds realized from such sale the county or city shall reimburse the sheriff for such excess, except that any such excess costs related to the disposal of a manufactured home shall be paid by the owner of the real property from which the manufactured home was removed. The sheriff, in his discretion, may refuse to remove or dispose of such manufactured home until the owner of the real property pays to the sheriff the estimated cost of such removal and disposition. Subsequent to disposition, the sheriff shall reimburse the owner to the extent the actual cost is less than the estimated cost, or shall request additional payment to the extent the actual cost exceeds the estimated cost.

§ 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~~ *oversee the removal of* 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~~ 24-hour period after eviction. Upon the expiration of the ~~twenty-four~~ 24-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~~ Any personal property ~~to removed pursuant to this section shall~~ 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~~ 24 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~~ 24-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.

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

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

69 § 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential
70 premises; recovery of possession by owner; disposition or sale.

71 Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling
72 unit pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which
73 personal property is removed from the dwelling unit in order to restore the dwelling unit to the person
74 entitled thereto, the sheriff shall ~~cause~~ *oversee the removal of* such personal property to be placed into
75 the public way. The tenant shall have the right to remove his personal property from the public way
76 during the ~~twenty-four~~ 24-hour period after eviction. Upon the expiration of the ~~twenty-four~~ 24-hour
77 period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in
78 the public way.

79 ~~At the landlord's request, the sheriff shall cause such~~ Any personal property ~~to be removed pursuant to~~
80 ~~this section shall~~ be placed into a storage area designated by the landlord, which may be the dwelling
81 unit. The tenant shall have the right to remove his personal property from the landlord's designated
82 storage area at reasonable times during the ~~twenty-four~~ 24 hours after eviction from the landlord's or at
83 such other reasonable times until the landlord has disposed of the property as provided herein. During
84 that ~~twenty-four~~ 24-hour period and until the landlord disposes of the remaining personal property of the
85 tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal
86 property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as
87 provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

88 Any property remaining in the landlord's storage area upon the expiration of the ~~twenty-four~~ 24 hour
89 period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the
90 landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds
91 to the account of the tenant and apply same to any amounts due the landlord by the tenant, including
92 the reasonable costs incurred by the landlord in the eviction process described in this section or the
93 reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining
94 after application, the remaining funds shall be treated as security deposit under applicable law.

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