

# VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

## CHAPTER 766

*An Act to amend and reenact §§ 15.2-2119 and 15.2-5139 of the Code of Virginia, relating to fees for water and sewer systems.*

[H 567]

Approved April 18, 2012

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

- 1. That §§ 15.2-2119 and 15.2-5139 of the Code of Virginia are amended and reenacted as follows:**  
§ 15.2-2119. Fees and charges for water and sewer services.

A. For water and sewer services provided by localities, fees and charges may be charged to and collected from: (i) any person contracting for the same; (ii) the owner *who is the occupant of the property or where a single meter serves multiple units*; (iii) a lessee or tenant, ~~or some or all of them who use or occupy any real estate~~ *provided that the lessee or tenant has written authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant with such fees and charges applicable for water and sewer services* (a) which directly or indirectly is or has been connected with the sewage disposal system and (b) from or on which sewage or industrial wastes originate or have originated and have directly or indirectly entered or will enter the sewage disposal system; or ~~(iii)~~ (iv) any user of a municipality's water or sewer system with respect to combined sanitary and storm water sewer systems where the user is a resident of the municipality and the purpose of any such fee or charge is related to the control of combined sewer overflow discharges from such systems. Such fees and charges shall be practicable and equitable and payable as directed by the respective locality operating or providing for the operation of the water or sewer system. *A locality providing water and sewer services may establish, by adoption of a resolution, that water and sewer services may be provided to a lessee or tenant pursuant to provision (iii) without obtaining an authorization form from the property owner. For purposes of this section, a written or electronic authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant substantially in the form as follows shall be sufficient compliance with this section:*

DATE

[INSERT NAME OF WATER AND SEWER SERVICES PROVIDER AND ADDRESS]

RE: [INSERT FULL TENANT NAME AND ADDRESS]

*To Whom It May Concern:*

*[INSERT TENANT NAME] has entered into a lease for the property located at [INSERT ADDRESS] and is authorized to obtain services at this address as a tenant of [INSERT PROPERTY OWNER NAME].*

Signed: \_\_\_\_\_

PROPERTY OWNER

B. Such fees and charges, being in the nature of use or service charges, shall, as nearly as the governing body deems practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or any other factors determining the type, class and amount of use or service of the sewage disposal system, or any combination of such factors, or on such other basis as the governing body may determine. Such fees and charges shall be due and payable at such time as the governing body may determine, and the governing body may require the same to be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees and charges is hereby declared to be revenue of such sewage disposal system.

C. Water and sewer connection fees established by any locality shall be fair and reasonable. Such fees shall be reviewed by the locality periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

D. If the fees and charges charged for *water service* or the use and services of the sewage disposal system by or in connection with any real estate are not paid when due, a penalty and interest shall at that time be owed as provided for by general law, and the owner, lessee or tenant, as the case may be, of such real estate shall, until such fees and charges are paid with such penalty and interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system. If such owner, lessee or tenant does not *pay the full amount of charges, penalty and interest for water provided* or cease such disposal within two months thereafter, the locality or person supplying water *or sewage disposal services* for the use of such real estate shall cease supplying water *and sewage disposal services* thereto unless the health officers certify that shutting off the water will endanger the health of the occupants of the premises or the health of others.

E. Such fees and charges, and any penalty and interest thereon, shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. ~~However, prior to recording a lien against the property owner, the locality or service authority shall obtain a judgment in a court of competent jurisdiction against the former tenant who contracted for such services for the amount of any delinquencies. After obtaining judgment against the former tenant as contracting party and using reasonable efforts to collect on the judgment, if the locality or service authority is unable to collect the balance due on the money judgment, the locality or service authority shall provide the property owner with 30 days' written notification to allow the property owner a reasonable opportunity to pay the amount of the lien and avoid the recordation of a lien against the property.~~

A lien may be placed on the property in the amount of up to three months of delinquent water and sewer charges, any applicable penalties and interest on such delinquent charges, and reasonable attorney fees and other costs of collection not exceeding 20 percent of such delinquent charges. In no case shall a lien for less than \$25 be placed against the property. In the case of services to a lessee or tenant, if the locality does not cease supplying water to the lessee or tenant 60 days after the bill becomes delinquent, unless water is required to be provided pursuant to subsection D or other applicable law, there shall be no lien placed on the property for charges and collection costs beyond the 60-day period and no recourse against the property owner for service beyond the 60-day period.

F. Unless the locality has adopted a resolution to not require authorization from land owners for water and sewer service provided to lessees or tenants pursuant to subsection A, a lien may be placed on the property for water and sewer services used by a lessee or tenant only if the locality has (i) advised the owner of the property in writing that a lien may be placed on the property if the lessee or tenant fails to pay any delinquent water and sewer charges; (ii) mailed by first-class mail to the owner of the property, or sent electronically if requested by the owner, at the address listed in the written authorization from the owner of the property (or such other address as the owner may provide), a duplicate copy of the final bill sent to the lessee or tenant at the time of sending the final bill to such lessee or tenant; (iii) collected a security deposit from the lessee or tenant as reasonably determined by the locality to be sufficient to collateralize the locality for not less than three and no more than five months of water and sewer charges; (iv) has applied the security deposit held by the locality to the payment of the outstanding balance; (v) has employed reasonable collection efforts and practices to collect amounts due from a lessee or a tenant including filing for the Set-Off Debt Collection Program if the locality is a participant; and (vi) has provided the property owner with 30 days' written notice with a copy of the final bill to allow the property owner a reasonable opportunity to pay the amount of any outstanding balance and avoid the recordation of a lien against the property. If the property owner fails to pay the amount of the outstanding ~~judgment~~ balance within the 30-day period, the locality ~~or the service authority~~ may record a lien in the amount of the outstanding ~~judgment~~ balance against the property owner. Upon payment of the outstanding ~~judgment~~ balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant ~~but for which judgment has not been obtained~~, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality ~~or the service authority~~ in the amount paid by the property owner. The locality ~~or service authority~~ shall execute all documents necessary to perfect such subrogation in favor of the property owner. Such amounts, plus reasonable attorney's or collection agency's fees which shall not exceed 20 percent of the delinquent tax bill, may be recovered by the locality by action at law or suit in equity. In any city with a population greater than 390,000, such fees and charges, along with delinquent water and sewer connection fees, and any penalty and interest thereon shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. Such amounts, plus reasonable attorney's or collection agency's fees which shall not exceed 20 percent of the delinquent fee or charge, may be recovered by such city by action at law or suit in equity.

G. When the owner has provided the lessee or tenant with written authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant, nothing herein shall be construed to authorize the locality to require (i) the owner to put water and sewer services in the name of the owner, except in the case where a single meter serves multiple tenant units, or (ii) a security deposit or a guarantee of payment from an owner of property.

H. The locality shall not require a security deposit from the lessee or tenant to obtain water and

sewer services in the name of such lessee or tenant if such lessee or tenant presents to the locality a landlord authorization letter which has attached documentation showing such lessee or tenant receives need-based local, state, or federal rental assistance, and the absence of a security deposit shall not prevent a locality from exercising its lien rights as authorized under subsection F.

I. Unless a lien has been recorded against the property owner, the locality ~~or service authority~~ shall not deny service to a new tenant who is requesting service at a particular property address based upon the fact that a former tenant has not paid any outstanding fees and charges charged for the use and services in the name of the former previous tenant. In addition, the locality ~~or service authority~~ shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner. If the property owner provides the locality a request to be notified of a tenant's delinquent water bill and provides an email address, the locality shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

J. Notwithstanding any provision of law to the contrary, any town with a population between 11,000 and 14,000, with the concurrence of the affected county, which provides and operates sewer services outside its boundaries may provide sewer services to industrial and commercial users outside its boundaries and collect such compensation therefor as may be contracted for between the town and such user. Such town shall not thereby be obligated to provide sewer services to any other users outside its boundaries.

K. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such delinquent charges is entered in the official records of the office of the clerk of the circuit court in the jurisdiction in which the real estate is located. The clerk shall make and index the entries in the clerk's official records for a fee of \$5 per entry, to be paid by the locality and added to the amount of the lien.

L. The lien on any real estate may be discharged by the payment to the locality of the total lien amount and the interest which has accrued to the date of the payment. The locality shall deliver a fully executed lien release substantially in the form set forth in this subsection to the person making the payment. The locality shall provide the fully executed lien release to the person who made payment within 10 business days of such payment if the person who made such payment did not personally appear at the time of such payment. Upon presentation of such lien release, the clerk shall mark the lien satisfied. There shall be no separate clerk's fee for such lien release. For purposes of this section, a lien release of the water and sewer lien substantially in the form as follows shall be sufficient compliance with this section:

Prepared By and When

Recorded Return to:

\_\_\_\_\_

\_\_\_\_\_

Tax Parcel/GPIN Number: \_\_\_\_\_

**CERTIFICATE OF RELEASE OF WATER AND SEWER SERVICE LIEN**

Pursuant to Va. Code Annotated § 15.2-2119 (L), this release is exempt from recordation fees.

Date Lien Recorded: \_\_\_\_\_ Instrument Deed Book No.: \_\_\_\_\_

Grantee for Index Purposes: \_\_\_\_\_

Claim Asserted: Delinquent water and sewer service charges in the amount of \$\_\_\_\_\_.

Description of Property: [Insert name of property owner and tax map parcel/GPIN Number]

The above-mentioned lien is hereby released.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

Acknowledged, subscribed, and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the [Insert Water/Sewer Provider

Name] on behalf of [Insert Water/Sewer Provider Name].

Notary Public

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

§ 15.2-5139. Lien for charges.

A. There shall be a lien upon real estate for the amount of any fees, rents or other charges by an authority to the owner or lessee or tenant of the real estate for the use and services of any system of the authority by or in connection with the real estate from the time when the fees, rents or charges are due, and for the interest which may accrue thereon. Such lien shall rank on a parity with liens for unpaid real estate taxes. An authority may contract with a locality to collect amounts due on properly recorded utility liens in the same manner as unpaid real estate taxes due the locality. A lien for delinquent rates or charges applicable to three or fewer months may be placed by an authority if the authority or its

billing and collection agent (i) has advised the owner of such real estate at the time of initiating service to a lessee or tenant of such real estate that a lien will be placed on the real estate if the lessee or tenant fails to pay any fees, rents or other charges when due for services rendered to the lessee or tenant; (ii) has mailed to the owner of the real estate a duplicate copy of the final bill rendered to the lessee or tenant at the time of rendering the final bill to such lessee or tenant; and (iii) employs the same collection efforts and practices to collect amounts due the authority from a lessee or a tenant as are employed with respect to collection of such amounts due from customers who are owners of the real estate for which service is provided.

However, prior to recording any lien on the owner's property, the authority shall provide the property owner with 30 days' written notification to allow the property owner a reasonable opportunity to pay the amount of the lien and avoid the recordation of a lien against the property. If the property owner fails to pay the amount of the former tenant's obligations within the 30-day period, the authority may record a lien in the amount of such outstanding obligations against the property owner. Upon payment of any outstanding amounts due by a former tenant of the property owner, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the authority in the amount paid by the property owner. The authority shall execute all documents necessary to perfect such subrogation in favor of the property owner. Unless a lien has been recorded against the property owner, the authority shall not deny service to a new tenant requesting service at a particular property address based upon the fact that a former tenant has not paid any outstanding fees and charges charged for the use and services in the name of the former tenant. In addition, the authority shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner with the written notification to the property owner as otherwise provided herein. If the property owner provides the authority a request to be notified of a tenant's delinquent water bill and provides an email address, the authority shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

B. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such fees, rents and charges is entered in a judgment lien book in the office where deeds may be recorded in the locality in which the real estate or a part thereof is located. The clerk in whose office deeds may be recorded shall make and index the entries therein upon certification by the authority, for which he shall be entitled to a fee of two dollars per entry, to be paid by the authority and added to the amount of the lien. The authority shall give the owner of the real estate notice in writing that it has made such certification to the clerk.

C. The lien on any real estate may be discharged by the payment to the authority of the total lien amount, and the interest which has accrued to the date of the payment. The authority shall deliver a certificate thereof to the person making the payment. Upon presentation of such certificate, the clerk having the record of the lien shall mark the entry of the lien satisfied, for which he shall be entitled to a fee of one dollar.

*An authority may place a lien upon the real property of an owner only in the same manner provided by § 15.2-2119 and such lien may only be processed, recorded, and released in accordance therewith.*

*An authority may contract with a locality to collect amounts due on properly recorded utility liens in the same manner as unpaid real estate taxes due the locality.*

**2. That the provisions of this act shall become effective for any water and sewer services contracted for after July 1, 2012.**