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SENATE BILL NO. 35

Offered January 11, 2012

Prefiled December 28, 2011

A *BILL to amend and reenact §§ 55-225.1 and 55-225.8 of the Code of Virginia, relating to recovery of possession by a landlord.*

Patron—Locke

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.1 and 55-225.8 of the Code of Virginia are amended and reenacted as follows:

§ 55-225.1. Recovery of possession limited.

A landlord may not recover or take possession of a residential dwelling unit by (i) willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service required to be supplied by the landlord under a rental agreement or (ii) refusal to permit the tenant access to ~~the~~ such unit unless such refusal is pursuant to *an unlawful detainer action from a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto.* A provision included in a rental agreement for a dwelling unit authorizing action prohibited by this section is unenforceable.

§ 55-225.8. Definitions for residential dwelling units subject to this chapter.

As used in this chapter, the following definitions apply:

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Dwelling unit" or "*residential dwelling unit*" means a ~~structure or part of a structure that is used as a home or residence by single-family residence where one or more persons who maintain a household; whether single family or multifamily therein,~~ including, but not limited to, a manufactured home. "*Dwelling unit*" shall not include the following:

1. *Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;*

2. *Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;*

3. *Occupancy in a hotel, motel, vacation cottage, boardinghouse, or similar lodging held out for transients, provided occupancy in such lodging is subject to taxation as provided in § 58.1-3819;*

4. *Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; and*

5. *Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial, or agricultural purposes.*

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal

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59 certificate of mailing or a certificate of service confirming such mailing prepared by the sender.
60 However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has
61 received a verbal notice of it, or from all of the facts and circumstances known to him at the time in
62 question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to
63 another by taking steps reasonably calculated to inform another person whether or not the other person
64 actually comes to know of it. If notice is given that is not in writing, the person giving the notice has
65 the burden of proof to show that the notice was given to the recipient of the notice.

66 "Readily accessible" means areas within the interior of the dwelling unit available for observation at
67 the time of the move-in inspection that do not require removal of materials, personal property,
68 equipment, or similar items.

69 "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion
70 of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person
71 who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no
72 right to occupy a dwelling unit.

73 "Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the
74 naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at
75 the time of the move-in inspection.

76 For any term not expressly defined herein, terms shall have the same meaning as those defined in
77 § 55-248.4.