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HOUSE BILL NO. 1749

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 55-225.8 and 55-248.5 of the Code of Virginia, relating to landlord and tenant laws; application to certain occupants of hotel, motel, extended stay facilities, and similar lodging.*

 Patron—Dance

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.8 and 55-248.5 of the Code of Virginia are amended and reenacted as follows:
§ 55-225.8. Residential dwelling units subject to this chapter; definitions; exceptions; application to certain occupants.

A. 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 financial obligations as a tenant under the rental agreement.

"Dwelling unit" or "residential dwelling unit" means a single-family residence where one or more persons maintain a household, including a manufactured home. Dwelling unit or residential dwelling unit shall not include:

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, *extended stay facility*, vacation ~~cottage~~ *residential facility*, boardinghouse, or similar lodging *as provided in subsection B held out for transients, unless let continuously to one occupant for more than 30 days, including occupancy in such lodging 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 certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person

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59 actually comes to know of it. If notice is given that is not in writing, the person giving the notice has
60 the burden of proof to show that the notice was given to the recipient of the notice.

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

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

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

71 For any term not expressly defined herein, terms shall have the same meaning as those defined in
72 § 55-248.4.

73 *B. No guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility,
74 boardinghouse, or similar lodging shall be construed to be a tenant living in a dwelling unit as defined
75 in this section if such person does not reside in such lodging as his primary residence. Such guest shall
76 be exempt from this chapter and the innkeeper or property owner, or agent thereof, shall have the right
77 to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer
78 action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant
79 thereto, which would otherwise be required under this chapter. For purposes of this chapter, a hotel,
80 motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging
81 shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished
82 to a person for consideration if such person does not reside in such lodging as his primary residence.*

83 *C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
84 boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days,
85 such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging
86 establishment shall give a five-day written notice of nonpayment to a person residing in such lodging
87 and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if
88 payment in full has not been received.*

89 *D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
90 boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days
91 or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of
92 this chapter.*

93 **§ 55-248.5. Exemptions; exception to exemption; application of chapter to certain occupants.**

94 A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not
95 governed by this chapter:

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

98 2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the
99 occupant is the purchaser or a person who succeeds to his interest;

100 3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated
101 for the benefit of the organization;

102 4. Occupancy in a hotel, motel, *extended stay facility, vacation cottage residential facility,*
103 *boardinghouse, or similar lodging as provided in subsection B held out for transients, unless let*
104 *continuously to one occupant for more than thirty days, including occupancy in a lodging subject to*
105 *taxation as provided in § 58.1-3819;*

106 5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon
107 employment in and about the premises or an ex-employee whose occupancy continues less than sixty
108 days;

109 6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

110 7. Occupancy under a rental agreement covering premises used by the occupant primarily in
111 connection with business, commercial or agricultural purposes;

112 8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department
113 of Housing and Urban Development where such regulation is inconsistent with this chapter;

114 9. Occupancy by a tenant who pays no rent; and

115 10. Occupancy in single-family residences where the owner(s) are natural persons or their estates
116 who own in their own name no more than ten single-family residences subject to a rental agreement; or
117 in the case of condominium units or single-family residences located in any city or in any county having
118 either the urban county executive form or county manager plan of government, no more than four.

119 B. *A guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility,
120 boardinghouse, or similar lodging shall not be construed to be a tenant living in a dwelling unit if such*

121 person does not reside in such lodging as his primary residence. Such guest shall be exempt from this
122 chapter and the innkeeper or property owner, or agent thereof, shall have the right to use self-help
123 eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court
124 of competent jurisdiction and the execution of a writ of possession issued pursuant thereto, which would
125 otherwise be required under this chapter. For purposes of this chapter, a hotel, motel, extended stay
126 facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from
127 the provisions of this chapter if overnight sleeping accommodations are furnished to a person for
128 consideration if such person does not reside in such lodging as his primary residence.

129 C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
130 boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days,
131 such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging
132 establishment shall give a five-day written notice of nonpayment to a person residing in such lodging
133 and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if
134 payment in full has not been received.

135 D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility,
136 boardinghouse, or similar transient lodging as their primary residence for more than 90 consecutive
137 days or is subject to a written lease for more than 90 days, such lodging shall be subject to the
138 provisions of this chapter.

139 E. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the
140 applicability of the provisions of this chapter in the rental agreement.