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**HOUSE BILL NO. 1767**

Offered January 14, 2015

Prefiled January 12, 2015

A *BILL to amend and reenact §§ 8.01-126, 8.01-128, 8.01-129, and 8.01-454 of the Code of Virginia, relating to unlawful detainer proceedings; satisfaction of judgments.*

Patron—Loupassi

Referred to Committee for Courts of Justice

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

**1. That §§ 8.01-126, 8.01-128, 8.01-129, and 8.01-454 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.**

A. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant Act (§ 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

B. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or paper printout of an electronically stored document including a copy of the original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. An ~~attorney or~~ agent of the landlord or managing agent may present such affidavit into evidence. *An attorney, as an officer of the court, may submit documents into evidence without an affidavit.*

C. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may include in the affidavit entered into evidence pursuant to subsection B a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that (i) the affidavit accurately sets forth the amount due the plaintiff and (ii) the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the affidavit and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises. *If the rental agreement or lease provides that rent is due and payable in advance of the first of the month for the entire month, the amount due as of the date of the hearing shall include the rent due for the entire month in which the hearing is held, and rent shall not be prorated as of the actual court date. Nothing in this section shall preclude the plaintiff, or the plaintiff's attorney or agent, from presenting evidence in lieu of an affidavit.*

**§ 8.01-128. Verdict and judgment; damages.**

A. If it appears that the plaintiff was forcibly or unlawfully turned out of possession, or that it was unlawfully detained from him, the verdict or judgment shall be for the plaintiff for the premises, or such part thereof as may be found to have been so held or detained. The verdict or judgment shall also be for such damages as the plaintiff may prove to have been sustained by him by reason of such forcible or unlawful entry, or unlawful detention, of such premises, and such rent as he may prove to have been owing to him.

B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the

59 property unlawfully entered or unlawfully detained and be issued a writ of possession, and continue the  
60 case for up to 90 days to establish final rent and damages. If the plaintiff elects to proceed under this  
61 section, the judge shall hear evidence as to the issue of possession on the initial court date and shall  
62 hear evidence on the final rent and damages at the hearing set on the continuance date, unless the  
63 plaintiff requests otherwise or the judge rules otherwise. Nothing in this section shall preclude (i) a  
64 plaintiff from submitting evidence by affidavit as provided in § 8.01-126 or (ii) a defendant who appears  
65 in court at the initial court date from contesting an unlawful detainer action as otherwise provided by  
66 law.

67 If under this section an appeal is taken as to possession, the entire case shall be considered appealed.  
68 The plaintiff shall, in the instance of a continuance taken under this section, mail to the defendant at the  
69 defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the  
70 continuance date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking  
71 judgment for additional sums. A copy of such notice shall be filed with the court.

72 C. No verdict or judgment rendered under this section shall bar any separate concurrent or future  
73 action for any such damages or rent as may not be so claimed.

74 **§ 8.01-129. Appeal from judgment of general district court.**

75 An appeal shall lie from the judgment of a general district court, in any proceeding under this article,  
76 to the circuit court in the same manner and with like effect and upon like security as appeals taken  
77 under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal  
78 shall be taken within 10 days and the security approved by the court from which the appeal is taken.  
79 Notwithstanding the provisions of § 16.1-106 et seq. the bond shall be posted and the writ tax paid  
80 within 10 days of the date of the judgment. Unless otherwise specifically provided in the court's order,  
81 no writ of execution shall issue on a judgment for possession until the expiration of this 10-day period;  
82 except in cases of judgment of default (i) wherein the case arises out of a trustee's deed following  
83 foreclosure, (ii) for the nonpayment of rent where the writ of execution shall issue immediately upon  
84 entry of judgment for possession, if requested by the plaintiff, or (iii) for immediate nonremediable  
85 terminations where the writ of execution shall issue immediately upon entry of judgment for possession,  
86 if requested by the plaintiff. When the appeal is taken by the defendant, he shall be required to give  
87 security also for all rent which has accrued and may accrue upon the premises, but for not more than  
88 one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and  
89 occupation of the premises for a period not exceeding three months. Trial by jury shall be had upon  
90 application of any party.

91 **§ 8.01-454. Judgment, when paid, to be so noted by creditor.**

92 In all cases in which ~~payment or~~ satisfaction of any judgment so docketed is made, which is not  
93 required to be certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor,  
94 himself, or by his agent or attorney, to cause such ~~payment or~~ satisfaction by the defendant, ~~whether in~~  
95 ~~whole or in part~~, and if there is more than one defendant, by which defendant it was ~~paid or discharged~~  
96 ~~satisfied~~, to be entered within 30 days after the same is made, on such judgment docket. If the judgment  
97 has not been docketed, then the entry shall be made on the execution book in the office of the clerk  
98 from which the execution issued. For any failure to do so within 90 days, or after 10 days' notice to do  
99 so by the judgment debtor or his agent or attorney, the judgment creditor shall be liable to a fine of  
100 \$100 and shall pay the filing cost of the release. The entry of ~~payment or~~ satisfaction shall be signed by  
101 the creditor or his duly authorized attorney or other agent and be attested by the clerk in whose office  
102 the judgment is docketed, or when not docketed, by the clerk from whose office the execution issued;  
103 however, the cost of the release shall be paid by the judgment debtor. *For any money judgment marked*  
104 *as satisfied pursuant to this section, nothing herein shall satisfy an unexecuted order of possession*  
105 *entered pursuant to § 8.01-126.*