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HOUSE BILL NO. 2281

Offered January 11, 2017

A BILL to amend and reenact §§ 54.1-2108.1, 55-225.12, and 55-507 of the Code of Virginia, relating to residential rental property.

Patron—Leftwich

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2108.1, 55-225.12, and 55-507 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2108.1. Protection of escrow funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action pursuant to § 16.1-77.

2. If there is in effect at the date of the foreclosure sale, a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the parties.

3. If there is in effect at the date of the foreclosure sale, a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

4. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the landlord. Upon such termination, the landlord shall be required to provide, and the tenant shall be entitled to receive, written notice in accordance with the provisions of §§ 55-222 and 55-248.73, as applicable. If, pursuant to the terms of the rental agreement, the tenant will be required to make one or more rental payments in the interim between the tenant's receipt of the landlord's notice of termination and the date upon which the tenancy will terminate, the tenant may pay the rent (i) to the successor landlord; (ii) to the managing agent of the landlord or successor landlord, if any; or (iii) into a court escrow account pursuant to the provisions of § 55-225.12. If the rent is paid to a real estate licensee acting on behalf of the landlord as a managing agent, such property management agreement having been entered into prior to and in effect at the time of the foreclosure sale, the managing agent may collect the rent and shall place it into an escrow account by the end of the fifth business banking day following receipt.

5. If there is in effect at the date of the foreclosure sale a written property management agreement between the landlord and a real estate licensee licensed pursuant to the provisions of § 54.1-2106.1, the foreclosure shall convert the property management agreement into a month-to-month agreement between the successor landlord and the real estate licensee acting as a managing agent, except in the event that the terms of the original property management agreement between the landlord and the real estate licensee acting as a managing agent require an earlier termination date. Unless altered by the parties, the terms of the original property management agreement that existed between the landlord and the real estate licensee acting as a managing agent shall govern the agreement between the successor landlord and the real estate licensee acting as a managing agent. The property management agreement may be terminated by either party upon provision of written notice to the other party at least 30 days prior to the intended termination date. Any funds received or held by the real estate licensee acting as a managing agent shall be disbursed only in accordance with the terms of the property management agreement or as otherwise provided by law.

B. Notwithstanding any other provision of law:

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59 1. Any prepaid rent paid more than one month prior to the rent due date to a real estate licensee
60 acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account
61 by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by
62 the principals to a lease transaction. Any rent paid less than one month prior to the rent due date shall
63 be current rent and may be deposited into an operating account of the real estate licensee.

64 2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in
65 connection with the lease shall be placed in an escrow account by the end of the fifth business banking
66 day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.

67 3. Any application deposit as defined by § 55-248.4 paid by a prospective tenant for the purpose of
68 being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord
69 client shall be placed in escrow by the end of the fifth business banking day following approval of the
70 rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease
71 transaction.

72 4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the
73 lease, the property management agreement, or the applicable statutory provisions, as applicable.

74 5. *In the event that a real estate licensee acting on behalf of a landlord client as a managing agent
75 elects to terminate the property management agreement, the licensee may transfer any funds held in
76 escrow by the licensee on behalf of the landlord client to the landlord client without his consent,
77 provided that the real estate licensee provides written notice to each tenant that the funds have been so
78 transferred.*

79 6. *A real estate licensee acting on behalf of a landlord client as a managing agent who complies
80 with the provisions of this section shall have immunity from any liability for such compliance, in the
81 absence of gross negligence or intentional misconduct.*

82 **§ 55-225.12. Tenant's assertion; rent escrow; dwelling units.**

83 A. The tenant may assert that there exists upon the dwelling unit, a condition or conditions which
84 constitute a material noncompliance by the landlord with the rental agreement or with provisions of law,
85 or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or
86 safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water,
87 except if the tenant is responsible for payment of the utility charge and where the lack of such heat or
88 hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or a lack of
89 light, electricity or adequate sewage disposal facilities; or an infestation of rodents; or the existence of
90 paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of
91 such paint. The tenant may file such an assertion in a general district court wherein the dwelling unit is
92 located by a declaration setting forth such assertion and asking for one or more forms of relief as
93 provided for in subsection D. *A tenant residing in a dwelling unit that has been foreclosed upon shall
94 be eligible to file an assertion pursuant to this subsection.*

95 B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

96 1. Prior to the commencement of the action the landlord was served a written notice by the tenant of
97 the conditions described in subsection A, or was notified of such conditions by a violation or
98 condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or
99 having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this
100 subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the
101 court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt
102 of the notification by the landlord is unreasonable; and

103 2. The tenant has paid into court the amount of rent called for under the rental agreement, within
104 five days of the date due thereunder, unless or until such amount is modified by subsequent order of the
105 court under this chapter.

106 C. It shall be sufficient answer or rejoinder to a declaration pursuant to subsection A if the landlord
107 establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist,
108 or such conditions have been removed or remedied, or such conditions have been caused by the tenant
109 or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused
110 entry to the landlord to the dwelling unit for the purpose of correcting such conditions.

111 D. Any court shall make findings of fact on the issues before it and shall issue any order that may
112 be required. Such an order may include, but is not limited to, any one or more of the following:

113 1. Terminating the rental agreement upon the request of the tenant or ordering the dwelling unit
114 surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful
115 detainer properly filed with the court;

116 2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in
117 accordance with this chapter, *or to the successor landlord or the successor landlord's managing agent in
118 accordance with § 54.1-2108.1;*

119 3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

120 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be

121 abated as determined by the court in such an amount as may be equitable to represent the existence of
122 the condition or conditions found by the court to exist. In all cases where the court deems that the
123 tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why
124 there should not be an abatement of rent;

125 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord
126 refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the
127 landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in
128 its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or
129 effecting a remedy;

130 6. Referring any matter before the court to the proper state or municipal agency for investigation and
131 report and granting a continuance of the action or complaint pending receipt of such investigation and
132 report. When such a continuance is granted, the tenant shall deposit with the court rent payments within
133 five days of the date due under the rental agreement, subject to any abatement under this section, which
134 become due during the period of the continuance, to be held by the court pending its further order;

135 7. In the court's discretion, ordering escrow funds disbursed to pay a mortgage on the property upon
136 which the dwelling unit is located in order to stay a foreclosure; or

137 8. In the court's discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a
138 bill to enforce a mechanic's or materialman's lien.

139 Notwithstanding any provision of this subsection, where an escrow account is established by the
140 court and the condition or conditions are not fully remedied within six months of the establishment of
141 such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall
142 award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be
143 terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the
144 condition or conditions have not been remedied.

145 E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15
146 calendar days from the date of service of process on the landlord, except that the court shall order an
147 earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of
148 heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate
149 threat to the health or safety of the inhabitants of the dwelling unit. The court, on motion of either party
150 or on its own motion, may hold hearings subsequent to the initial proceeding in order to further
151 determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by
152 order of the court after a hearing of which both parties are given notice as required by law or upon
153 motion of both the landlord and tenant or upon certification by the appropriate inspector that the work
154 required by the court to be done has been satisfactorily completed.

155 **§ 55-507. Transfer of deposits upon purchase.**

156 The *current* owner of rental property shall transfer any security deposits and any accrued interest on
157 the deposits in his possession to the new owner at the time of the transfer of the rental property. *If the*
158 *current owner has entered into a written property management agreement with a managing agent in*
159 *accordance with the provisions of subsection E of § 54.1-2135, the current owner shall give written*
160 *notice to the managing agent requesting payment of such security deposits to the current owner prior to*
161 *settlement with the new owner. Upon receipt of the written notice, the managing agent shall transfer the*
162 *security deposits to the current owner and provide written notice to each tenant that his security deposit*
163 *has been transferred in accordance with this section. The managing agent shall not be held liable for*
164 *failure to transfer the security deposits in the event that the landlord fails to send the required written*
165 *notice to the managing agent.*