

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 15.2-2119, 15.2-2119.1, 15.2-2122, and 15.2-5139 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2119.4, relating to water and sewer liens; lessee or tenant.

[S 1189]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2119, 15.2-2119.1, 15.2-2122, and 15.2-5139 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2119.4 as follows:

§ 15.2-2119. Fees and charges for water and sewer services provided to a property owner.

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, ~~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 in accordance with § 15.2-2119.4~~ 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 (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

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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~~ *that* 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 30 days thereafter, the locality or person supplying water or sewage disposal services for the use of such real estate shall notify such owner, lessee, or tenant of the delinquency. 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 60 days after the delinquent fees and charges charged for water or sewage disposal services are due, the locality or person supplying water or sewage disposal services for the use of such real estate may 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. At least ~~ten~~ 10 business days prior to ceasing the supply of water or sewage disposal services, the locality or person supplying such services shall provide the owner, lessee, or tenant with written notice of such cessation.

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.

A lien may be placed on the property *when the owner has been advised in writing that a lien may be placed upon the property if the owner fails to pay any delinquent water and sewer charges. Such written notice shall be provided at least 30 days in advance of recordation of any lien with a copy of the bill for delinquent water and sewer charges to allow the property owner a reasonable opportunity to pay the amount of the outstanding balance and avoid the recordation of a lien against the property. The lien may be in the amount of (i) up to three months of delinquent water and sewer charges when the water or sewer is, or both are, supplied to a lessee or tenant pursuant to this section; (ii) when the water or sewer is, or both are, provided to the property owner, up to the number of months of delinquent water or sewer charges; (iii) when the water or sewer is, or both are, provided to the property owner; (ii) any applicable penalties and interest on such delinquent charges; and (iv) (iii) 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 within 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 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 ~~owner~~ 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) applied the security deposit held by the locality to the payment of the outstanding balance; (v) 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) (iii) 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 balance within the 30-day period, the locality may record a lien in the amount of the outstanding balance against the property owner. Upon payment of the outstanding balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality in the amount paid by the property owner. The locality shall execute all

documents necessary to perfect such subrogation in favor of the property owner.

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 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 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 that 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.~~ G. 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.~~ H. 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~~) (H), 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: _____

§ 15.2-2119.1. Credit for excessive water and sewer charges.

A locality or authority, as such term is defined in § 15.2-5101, may provide a partial credit for excessive water and sewer charges where high water usage is caused by damaged pipes, leaks, accidents, or other intentional or unintentional causes.

§ 15.2-2119.4. Fees and charges for water and sewer services provided to a tenant or lessee of the property owner.

A. Notwithstanding any provision of law, general or special, the provisions of this section apply to any locality or authority, as such term is defined in § 15.2-5101.

B. A locality or authority providing water or sewer services to a lessee or tenant of the property owner shall do so directly to the tenant after (i) obtaining from the property owner a written or electronic authorization to obtain water and sewer services in the name of such lessee or tenant and (ii) if the locality or authority decides to use the lien rights afforded under subsection G of § 15.2-2119, collecting a security deposit from the lessee or tenant as reasonably determined by the locality to be sufficient to collateralize the locality or authority for not less than three and no more than five months of water and sewer charges. When the property owner has provided the lessee or tenant with written authorization from the property owner to obtain water and sewer services in the name of such lessee or tenant, nothing herein shall be construed to authorize the locality or authority to require (a) the property owner to put water and sewer services in the name of such property owner, except in the case where a single meter serves multiple tenant units, or (b) a security deposit or a guarantee of payment from such property owner. The property owner, lessee, or tenant may provide a copy of the lease or rental agreement to the locality or authority in lieu of the written authorization.

C. For purposes of this section, a written or electronic authorization from the property owner to obtain water and sewer services in the name of such lessee or tenant substantially in the form as follows, or a copy of the lease or rental agreement, 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

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 be owed, as provided for by general law, by the lessee or tenant. If such lessee or tenant does not pay the full amount of charges, penalty, and interest for water provided or cease such disposal within 30 days thereafter, the locality or authority supplying water or sewage disposal services for the use of such real estate shall notify such lessee or tenant of the delinquency. If such lessee or tenant does not pay the full amount of charges, penalty, and interest for water provided or cease such disposal within 60 days after the delinquent fees and charges charged for water or sewage disposal services are due, the locality or authority supplying water or sewage disposal services for the use of such real estate may 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. At least 10 business days prior to ceasing the supply of water or sewage disposal services, the locality or authority supplying such services shall provide the lessee or tenant with written notice of such cessation, with a copy to the property owner.

E. If the lessee or tenant does not pay the full amount of charges, penalty, and interest for water or the use and services of the sewage disposal system in a timely manner as set out herein, in addition to cessation of such service, the locality or authority shall employ reasonable collection efforts and practices to collect amounts due from the lessee or tenant prior to sending written notice to, or taking any collection or legal action against, the property owner regarding the delinquency of payment of such lessee or tenant. For the purposes of this section, "reasonable collection efforts and practices" include (i) applying the security deposit paid by the lessee or tenant held by the locality or authority to the

payment of the outstanding balance; and (ii) either filing for the Setoff Debt Collection Program (§ 58.1-520 et seq.) or placing the account with a debt collection service.

F. Only after the locality or service authority has taken the reasonable collection efforts set forth in subsection E of § 15.2-2119 and practices to collect such fees and charges from the lessee or tenant may the locality or service authority proceed to notify the property owner of such outstanding lien obligation of such lessee or tenant and thereafter to record a lien against the property owner by using the lien recordation and release of lien processes as set out in § 15.2-2119 and only after notice to the property owner as required in § 15.2-2119. Such a lien, up to three months of delinquent water and sewer charges, shall constitute a lien against the property ranking on a parity with liens for unpaid taxes.

G. If a lien is recorded against the property owner and the property owner pays any of the delinquent obligations of such former lessee or tenant, upon payment of the outstanding balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality or authority in the amount paid by the property owner. The locality or authority shall execute all documents necessary to perfect such subrogation in favor of the property owner.

H. Unless a lien has been recorded against the property owner, the locality or 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 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 or authority a request to be notified of a tenant's delinquent water or sewer bill and provides an email address, the locality or authority shall send the property owner notice when a tenant's water or sewer bill has become 15 days delinquent.

I. When a locality or authority does not require a lessee or tenant to pay a security deposit to the locality or authority as a condition precedent to turning on water or sewer services in the name of the lessee or tenant, such locality or authority shall waive its lien rights against the property owner. All other provisions of this section shall apply.

J. The locality or authority 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 or authority a landlord authorization letter that has attached documentation showing that 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 this section. All other provisions of this section shall apply.

§ 15.2-2122. Localities authorized to establish, etc., sewage disposal system; incidental powers.

For the purpose of providing relief from pollution, and for the improvement of conditions affecting the public health, and in addition to other powers conferred by law, any locality shall have power and authority to:

1. Establish, construct, improve, enlarge, operate and maintain a sewage disposal system with all the necessary sewers, conduits, pipelines, pumping and ventilating stations, treatment plants and works, and other plants, structures, boats, conveyances and other real and personal property necessary for the operation of such system, subject to the approvals required by § 62.1-44.19.

2. Acquire as permitted by § 15.2-1800, real estate, or rights or easements therein, necessary or convenient for the establishment, enlargement, maintenance or operation of such sewage disposal system and the property, in whole or in part, of any private or public service corporation operating a sewage disposal system or chartered for the purpose of acquiring or operating such a system, including its lands, plants, works, buildings, machinery, pipes, mains and all appurtenances thereto and its contracts, easements, rights and franchises, including its franchise to be a corporation, and have the right to dispose of property so acquired no longer necessary for the use of such system. However, any locality condemning property hereunder shall rest under obligation to furnish sewage service, at appropriate rates, to the customers of any corporation whose property is condemned.

3. Borrow money for the purpose of establishing, constructing, improving and enlarging the sewage disposal system and to issue bonds therefor in the name of the locality.

4. Accept gifts or grants of real or personal property, money, material, labor or supplies for the establishment and operation of such sewage disposal system and make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

5. Enter on any lands, waters and premises for the purpose of making surveys, borings, soundings and examinations for constructing and operating the sewage disposal system, and for the prevention of pollution.

6. Enter into contracts with the United States of America, or any department or agency thereof, or

any person, firm or corporation, or the governing body of any other locality, providing for or relating to the treatment and disposal of sewage and industrial wastes.

7. Fix, charge and collect fees or other charges for the use and services of the sewage disposal system; and, except in counties which are not otherwise authorized, require the connection of premises with facilities provided for sewage disposal services. 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.

8. Finance in whole or in part the cost of establishing, constructing, improving or enlarging the sewage disposal systems authorized to be established, constructed, improved or enlarged by this section, in advance of putting such systems in operation.

9. Fix, charge and collect fees and other charges for the use and services of sanitary, combined and storm water sewers operated and maintained by any locality. Such fees and charges may be fixed and collected in accordance with and subject to the provisions of §§ 15.2-2119 through 15.2-2119.4.

10. Establish standards for the use and services of sanitary, combined and stormwater sewer systems, treatment works and appurtenances operated and maintained by any locality, including but not limited to implementation of applicable pretreatment requirements pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and the federal Clean Water Act (33 U.S.C. § 1251 et seq.). Such sewer use standards may be implemented by ordinance, regulation, permit or contract of the locality or of the wastewater authority or sanitation district, where applicable, and violations thereof may be enforced by the same subject to the following conditions and limitations:

a. No order assessing a civil penalty for a violation shall be issued until after the user has been provided an opportunity for a hearing, except with the consent of the user. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, on any authorized representative of the user at least 30 days prior to the hearing. The notice shall specify the time and place for the hearing, facts and legal requirements related to the alleged violation, and the amount of any proposed penalty. At the hearing the user may present evidence including witnesses regarding the occurrence of the alleged violation and the amount of the penalty, and the user may examine any witnesses for the locality. A verbatim record of the hearing shall be made. Within 30 days after the conclusion of the hearing, the locality shall make findings of fact and conclusions of law and issue the order.

b. No order issued by the locality shall assess civil penalties in excess of the maximum amounts established in subdivision (8a) of § 62.1-44.15, except with the consent of the user. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm or facility damage, the compliance history of the user, any economic benefit realized from the noncompliance, and the ability of the user to pay the penalty, provided, however, that in accordance with subdivision 10 d, a locality may establish a uniform schedule of civil penalties for specified types of violations. In addition to civil penalties, the order may include a monetary assessment for actual damages to sewers, treatment works and appurtenances and for costs, attorney fees and other expenses resulting from the violation. Civil penalties in excess of the maximum amounts established in subdivision (8a) of § 62.1-44.15 may be imposed only by a court in amounts determined in its discretion but not to exceed the maximum amounts established in § 62.1-44.32.

c. Any order issued by the locality, whether or not such order assesses a civil penalty, shall inform the user of his right to seek reconsideration or review within the locality, if authorized, and of his right to judicial review of any final order by appeal to circuit court on the record of proceedings before the locality. To commence an appeal, the user shall file a petition in circuit court within 30 days of the date of the order, and failure to do so shall constitute a waiver of the right to appeal. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support such findings.

d. In addition, a locality may, by ordinance, establish a uniform schedule of civil penalties for violations of fats, oils, and grease standards; infiltration and inflow standards; and other specified provisions of any ordinance (other than industrial pretreatment requirements of the State Water Control Law (§ 62.1-44.2 et seq.) or federal Clean Water Act (33 U.S.C. § 1251 et seq.)). The schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons, not more than \$150 for each additional summons and not more than a total amount of \$3,000 for a series of specified violations arising from the same operative set of facts. The locality may issue a civil summons ticket for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the treasurer of the locality prior to the date fixed for trial

in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any such trial, the locality shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding, and no civil action authorized by this section shall proceed while a criminal action is pending.

e. This subdivision shall neither preclude a locality from proceeding directly in circuit court to compel compliance with its sewer use standards or seek civil penalties for violation of the same nor be interpreted as limiting any otherwise applicable legal remedies or sanctions. Each day during which a violation is found to have existed shall constitute a separate violation, and any civil penalties imposed under this subdivision shall be applied to the purpose of abating, preventing or mitigating environmental pollution.

f. For purposes of enforcement of standards established under this subdivision, "locality" shall mean the locality's director of public utilities or other designee of the locality with responsibility for administering and enforcing sewer use standards or, in the case of a wastewater authority or sanitation district, its chief executive.

§ 15.2-5139. Lien for charges.

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 only provide services to lessees or tenants of property owners in accordance with § 15.2-2119.4.*

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.