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SENATE BILL NO. 966

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 30, 2017)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 54.1-2108.1 and 55-225.12 of the Code of Virginia, relating to residential rental property; foreclosure sale; tenant's assertion.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2108.1 and 55-225.12 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 pursuant to § 55-225.10, the foreclosure acts as a termination of the rental agreement by the landlord and the tenant may remain in possession of such dwelling. 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:

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

2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking

60 day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.

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

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

68 5. *Except in the event of foreclosure, if a real estate licensee acting on behalf of a landlord client as
69 a managing agent elects to terminate the property management agreement, the licensee may transfer any
70 funds held in escrow by the licensee on behalf of the landlord client to the landlord client without his
71 consent, provided that the real estate licensee provides written notice to each tenant that the funds have
72 been so transferred. In the event of foreclosure, a real estate licensee shall not transfer any funds to a
73 landlord client whose property has been foreclosed upon.*

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

77 **§ 55-225.12. Tenant's assertion; rent escrow; dwelling units.**

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

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

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

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

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

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

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

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

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

115 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be
116 abated as determined by the court in such an amount as may be equitable to represent the existence of
117 the condition or conditions found by the court to exist. In all cases where the court deems that the
118 tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why
119 there should not be an abatement of rent;

120 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord
121 refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the

landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

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

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

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

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

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