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**HOUSE BILL NO. 311**

Offered January 10, 2018

Prefiled January 4, 2018

*A BILL to amend and reenact §§ 8.01-126 and 8.01-130 of the Code of Virginia, relating to unlawful detainer; foreclosure; legal title to real property foreclosed upon.*

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Patron—Simon

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-126 and 8.01-130 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 and 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.

C. 1. 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 submit into evidence by an affidavit or sworn testimony 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. The plaintiff or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a variance reducing the amount due the plaintiff as of the day of the hearing.

2. If 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 evidence and in accordance with the amounts contracted for in the rental agreement 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.

3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement or lease provides that rent is due and payable on the first of the month in advance for the entire month, at the request of the plaintiff or the plaintiff's attorney or agent, 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. Otherwise, the rent shall be prorated as of the date of the hearing. However, nothing herein shall be construed to permit a landlord to collect rent in excess of the amount stated in such rental agreement or lease. If a money judgment has been granted for the amount due for the month of the hearing pursuant to this section and the landlord re-rents such dwelling unit and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

4. *In the case of a summons for unlawful detainer filed by a successor landlord following the foreclosure of a dwelling unit, the general district court shall determine whether there may be a valid issue as to the legal title to the real property foreclosed upon if (i) such an issue is raised by the*

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59 defendant to such summons and (ii) the court determines that allegations made by such defendant  
60 raising such issue are sufficient to state a bona fide claim as to the validity of such legal title.

61 If the general district court finds that there may be a valid issue as to such legal title as raised by  
62 such defendant, the court shall dismiss the case without prejudice, and the landlord shall proceed with  
63 its unlawful detainer case in the circuit court. Such dismissal without prejudice is not appealable. If the  
64 general district court finds that no valid issue as to such legal title exists, the general district court shall  
65 proceed with the unlawful detainer case. A decision that no valid issue as to the legal title exists shall  
66 be with prejudice and is appealable by the defendant to the circuit court, but only upon posting of bond  
67 for such appeal as otherwise provided by law.

68 Nothing in this section grants the general district court subject matter jurisdiction to determine legal  
69 title to real property.

70 **§ 8.01-130. Judgment not to bar action of trespass, ejectment, or unlawful detainer.**

71 No judgment in an action brought under the provisions of this article shall bar any action of trespass  
72 or, ejectment, or unlawful detainer between the same parties, nor shall any such judgment or verdict be  
73 conclusive, in any such future action, of the facts therein found.