

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 355

An Act to amend and reenact §§ 55-226.2, 55-248.4, 55-248.16, 56-1.2, and 56-245.3 of the Code of Virginia, relating to ratio utility billing systems for commercial and residential rental units.

[H 1945]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-226.2, 55-248.4, 55-248.16, 56-1.2, and 56-245.3 of the Code of Virginia are amended and reenacted as follows:

§ 55-226.2. Submetering, energy allocation equipment, ratio utility billings systems.

A. Submetering equipment or energy allocation equipment, as defined in § 56-245.2, *or a ratio utility billing system as defined in subsection F*, may be used in ~~an office building or shopping center a commercial or residential building, as defined in subsection F~~, if clearly stated in the rental agreement or lease for the individual rental unit. Such equipment may also be used in an apartment house if clearly stated in the rental agreements or leases for individual residential rental units. *leased premises or dwelling unit*. All submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

B. If submetering ~~or equipment~~, energy allocation equipment, *or a ratio utility billing system* is used in any building, the owner, manager, or operator of the building shall bill the tenant for electricity ~~or~~, natural gas *or water and sewer* for the same billing period as the electric ~~or natural gas~~ utility serving the building, unless the rental agreement or lease for the individual rental unit expressly permits provides otherwise. *The owner, manager, or operator of the building may charge and collect from the tenant additional service charges, including, but not limited to, monthly billing fees, account set-up fees or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building owner and the tenant in the rental agreement or lease. The building owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.*

C. Energy allocation equipment shall be tested periodically by the owner, operator or manager of the building. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a ~~twenty-four~~ 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within ~~ten~~ 10 working days after the completion of the test.

D. The owner of any building shall maintain adequate records regarding submetering *and equipment*, energy allocation equipment *and the bills rendered based on the operation of such equipment, or a ratio utility billing system*. A tenant may inspect and copy the records for his rental unit *the leased premises* during reasonable business hours at a convenient location within the building. The owner of the building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

E. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, *if applicable*, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of this title, *if applicable*. *The use of submetering equipment or energy allocation equipment, as defined in § 56-245.2, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 35 (§ 3.1-919 et seq.) of Title 3.1.*

F. As used in this section, "building" :

"Building" means all of the individual units served through the same utility-owned meter within ~~an~~ a commercial or residential building as defined in § 56-245.2 as an apartment building or house, office building or shopping center as defined in § 56-245.2.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a building, the actual water, sewer, electrical or natural gas billings received by the building owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building owner and the tenant in the rental agreement or lease.

§ 55-248.4. Definitions.

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application fee" means any deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord, lessor, or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under a management agreement.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any combination thereof, and any other legal or commercial entity.

"Owner" means one or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to the property, or
2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 55-248.17 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application fee until the effective date of the rental agreement. Security deposit shall not include a bond or commercial insurance policy purchased by a tenant to secure the performance of the terms and conditions of a rental agreement.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or

service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Utility" means a ~~service such as light, power,~~ electricity, ~~natural gas, or water and sewer~~ provided by a public service corporation ~~or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.~~

§ 55-248.16. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

5. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, *and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement*;

6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;

8. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

9. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ 56-1.2. Persons not designated as public utility, public service corporation, etc.

The terms public utility, public service corporation or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.) and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to any person who owns or operates property and provides electricity, natural gas ~~or~~, water, ~~or sewer service~~ to residents or tenants on the property, provided that (i) the electricity, natural gas ~~or~~, water ~~or sewer service~~ provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the electricity, natural gas ~~or~~, water, ~~or sewer service~~ which is ~~permitted by § 56-245.3 attributable to usage by the resident or tenant on the property, and additional service charges permitted by § 55-226.2,~~ and (iii) the person maintains three years' billing records for such charges.

§ 56-245.3. Commission to promulgate regulations and standards.

A. Notwithstanding any law to the contrary, the Commission shall promulgate regulations and standards under which any owner, operator, or manager of an apartment house, office building or shopping center, which is not individually metered for electricity or gas for each dwelling unit or nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating (a) the cost of electrical or gas consumption for each dwelling unit or nonresidential rental unit and (b) electrical or gas demand and customer charges made by the utility. In addition to other appropriate safeguards for the tenant, the regulations shall require (i) that an apartment house, office building or shopping center owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that ~~an additional service charge not to exceed two dollars per dwelling unit or nonresidential rental unit per month charges permitted by § 55-226.2~~ may be collected to cover administrative costs and billing, and (ii) that the apartment house, office building or shopping center owner shall maintain adequate records regarding submetering and energy allocation equipment and shall

make such records available for inspection by the Commission during reasonable business hours. The provisions of this section shall not restrict the right of the owner, operator or manager to recover in periodic lease payments the tenant's fair share of electricity or gas costs attributable to owner-paid areas and costs incurred by the owner, operator or manager in establishing and maintaining the submetering or energy allocation equipment.

B. Only for purposes of Commission enforcement of the regulations adopted under this section, the owners, operators, or managers of apartment houses, office buildings or shopping centers included within the purview of this article shall be treated as public service corporations under §§ 56-5, 56-6 and 56-7. All submetering equipment shall be subject to the same regulations and standards established by the Commission for accuracy, testing, and record keeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of § 56-245.1. All energy allocation equipment shall be subject to regulations and standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each dwelling unit or nonresidential rental unit. Violations of Commission regulations and orders issued under this section shall be subject to the penalty set forth in § 12.1-33.

C. In implementing this section, no apartment house, office building or shopping center shall be considered a public utility or public service corporation engaged in the business of distributing or reselling electricity or gas except as provided in subsection B of this section. The apartment house, office building or shopping center may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the apartment house, office building or shopping center.