

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 63

An Act to amend and reenact §§ 8.01-27.1, 8.01-27.2, 8.01-126, and 8.01-471 of the Code of Virginia, relating to civil action; failed electronic payments; unlawful detainer remedies.

[H 1509]

Approved March 5, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-27.1, 8.01-27.2, 8.01-126, and 8.01-471 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-27.1. Additional recovery in certain civil actions concerning checks or rejected electronic funds transfers.

A. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in any civil claim or action made or brought against the drawer of a check, draft or order, payment of which has been refused by the drawee depository because of lack of funds in or credit with such drawee depository, or because such check, draft or order was returned because of a stop-payment order placed in bad faith on the check, draft or order by the drawer, the holder or his agent shall be entitled to claim, in addition to the face amount of the check (i) legal interest from the date of the check, (ii) the protest or bad check return fee, if any, charged to the holder by his bank or other depository, (iii) a processing charge of \$50, and (iv) reasonable attorney's fees if awarded by the court.

B. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, any holder of a check, draft or order, payment of which has been refused by the drawee for insufficient funds or credit or because of a stop-payment order placed in bad faith, who charges the drawer amounts in excess of those authorized in subsection A on account of payment being so refused shall, upon demand, be liable to the drawer for the lesser of (i) \$50 plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

C. If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under subsection B. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693(a).

§ 8.01-27.2. Civil recovery for giving bad check.

A. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in the event a check, draft or order, the payment of which has been refused by the drawee because of lack of funds in or credit with such drawee, is not paid in full within thirty days after receipt by the drawer of (i) written notice by registered, certified, or regular mail with the sender retaining an affidavit of service of mailing or other sufficient proof of mailing, which may be a U.S. Postal Certificate of Mailing or (ii) if for nonpayment of rent under § 55-225 or 55-248.31, written notice in accordance therewith, from the payee that the check, draft or order has been returned unpaid, the payee may recover from the drawer in a civil action brought by the filing of a warrant in debt, the lesser of \$250 or three times the amount of the check, draft or order. The amount recovered as authorized by this section shall be in addition to the amounts authorized for recovery under § 8.01-27.1. No action may be initiated under this section if any action has been initiated under § 18.2-181. The drawer shall be obligated to pay the cost of service and the cost of mailing, as applicable.

B. If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under § 8.01-27.1. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693(a).

§ 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 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. *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 include in the affidavit entered into evidence pursuant to subsection B 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. Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that the affidavit accurately sets forth the amount due the plaintiff, the court shall enter a judgment for such amount in addition to entering an order of possession for the premises.*

§ 8.01-471. Time period for issuing writs of possession in unlawful entry and detainer; when returnable.

Writs of possession, in case of unlawful entry and detainer, shall be issued within one year from the date of judgment for possession and shall be made returnable within 30 days from the date of issuing the writ. No writ shall issue, however, in cases under the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) if, following the entry of judgment, the landlord has accepted rent payments without reservation, as described in § 55-248.34:1. *A writ of possession may be requested by the plaintiff or the plaintiff's attorney or agent.*