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HOUSE BILL NO. 638**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on January 30, 2014)

(Patron Prior to Substitute—Delegate Miller)

A *BILL to amend and reenact §§ 55-248.2, 55-248.31, 55-248.34:1, and 55-248.38:3 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; tenant's noncompliance; death of tenant.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.2, 55-248.31, 55-248.34:1, and 55-248.38:3 of the Code of Virginia are amended and reenacted as follows:

§ 55-248.2. Short title.

This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Act."

§ 55-248.31. Noncompliance with rental agreement; monetary penalty.

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days

60 from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation
61 of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the
62 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a
63 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the
64 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the
65 tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions
66 of this subsection are not applicable, the tenant shall remain responsible for the acts of the other
67 co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to
68 termination of the tenancy pursuant to the lease and this chapter.

69 E. If the tenant has been served with a prior written notice which required the tenant to remedy a
70 breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent
71 breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant
72 specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach
73 of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days
74 after receipt of the notice.

75 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
76 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
77 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
78 agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for
79 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds
80 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad
81 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is
82 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the
83 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed
84 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and
85 proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to
86 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery
87 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to
88 § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be
89 included in the five-day termination notice provided in accordance with this section.

90 G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief
91 for any noncompliance by the tenant with the rental agreement or § 55-248.16. ~~The In the event of a~~
92 ~~breach of the rental agreement or noncompliance by the tenant, the~~ landlord shall be entitled to recover
93 reasonable attorney fees unless the tenant proves by a preponderance of the evidence that the failure of
94 the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the
95 payment of reasonable attorney fees in the event of a breach of the agreement or noncompliance by the
96 tenant, the landlord shall be entitled to recover and the court shall award reasonable attorney fees in any
97 action based upon the tenancy in which the landlord prevails, including but not limited to actions for
98 damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain
99 possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that
100 the tenant's failure to pay rent or vacate was reasonable from the tenant the following, regardless of
101 whether or not a lawsuit is filed or an order obtained from a court: (i) rent due and owing as
102 contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental
103 agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as
104 contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted
105 for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages
106 to the dwelling unit or premises as contracted for in the rental agreement.

107 H. ~~In a case where a lawsuit is pending before the court upon a breach of the rental agreement or~~
108 ~~noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the~~
109 ~~landlord and against the tenant for the relief requested, which may include the following: (i) rent due~~
110 ~~and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as~~
111 ~~contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv)~~
112 ~~reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any~~
113 ~~such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or~~
114 ~~vacate was reasonable, (v) costs of the proceeding as contracted for in the rental agreement or as~~
115 ~~provided by law, and (vi) damages to the dwelling unit or premises.~~

116 **§ 55-248.34:1. Landlord's acceptance of rent with reservation.**

117 A. Provided the landlord has given written notice to the tenant that the rent will be accepted with
118 reservation, the landlord may accept full or partial payment of all rent and receive an order of
119 possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under
120 Chapter 13 (§ 8.01-374 et seq.) of Title 8.01 and proceed with eviction under § 55-248.38:2. Such notice
121 shall be included in a written termination notice given by the landlord to the tenant in accordance with

§ 55-248.31 or in a separate written notice given by the landlord to the tenant within five business days of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance with § 55-248.31, the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant.

B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to § 55-248.38:2, the landlord may accept all amounts owed to the landlord by the tenant, including full payment of any money judgment, award of attorney fees and court costs, and all subsequent rents that may be paid prior to eviction, and proceed with eviction provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees and court costs, and all subsequent rents that may be paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant. *Writs of possession in cases of unlawful entry and detainer are otherwise subject to § 8.01-471.*

C. However, the tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.

D. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof.

§ 55-248.38:3. Disposal of property of deceased tenants.

A. If a tenant, who is the sole occupant of the dwelling unit, dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises, ~~or in a storage area provided by the landlord, provided.~~ *However, the landlord has given shall give* at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § 55-248.6 if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55-248.38:1, if not claimed within 10 days.

B. *The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to*

183 *the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the*
184 *deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.*

185 *C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the*
186 *tenant, who is the sole occupant of the dwelling unit, and the landlord shall not be required to seek an*
187 *order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable*
188 *for actual damages under § 55-248.35, and the landlord shall mitigate damages as provided thereunder.*