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HOUSE BILL NO. 1767

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 16, 2015)

(Patron Prior to Substitute—Delegate Loupassi)

*A BILL to amend and reenact §§ 8.01-126, 8.01-454, and 16.1-94.01 of the Code of Virginia, relating to unlawful detainer proceedings; satisfaction of judgments.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-126, 8.01-454, and 16.1-94.01 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 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 ~~include in the submit into evidence by an affidavit entered into evidence pursuant to subsection B 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. ~~Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that (i) the affidavit accurately sets forth the amount due the plaintiff and (ii) the~~ 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 ~~affidavit~~ evidence 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.

§ 8.01-454. Judgment, when satisfied, to be so noted by creditor.

In all cases in which ~~payment or~~ satisfaction of any judgment so docketed is made, which is not required to be certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor,

60 himself, or by his agent or attorney, to cause such ~~payment or~~ satisfaction by the defendant, ~~whether in~~
61 ~~whole or in part~~, and if there is more than one defendant, by which defendant it was ~~paid or discharged~~
62 *satisfied*, to be entered within 30 days after the same is made, on such judgment docket. If the judgment
63 has not been docketed, then the entry shall be made on the execution book in the office of the clerk
64 from which the execution issued. For any failure to do so within 90 days, or after 10 days' notice to do
65 so by the judgment debtor or his agent or attorney, the judgment creditor shall be liable to a fine of
66 \$100 and shall pay the filing cost of the release. The entry of ~~payment or~~ satisfaction shall be signed by
67 the creditor or his duly authorized attorney or other agent and be attested by the clerk in whose office
68 the judgment is docketed, or when not docketed, by the clerk from whose office the execution issued;
69 however, the cost of the release shall be paid by the judgment debtor. *For any money judgment marked*
70 *as satisfied pursuant to this section, nothing herein shall satisfy an unexecuted order of possession*
71 *entered pursuant to § 8.01-126.*

72 **§ 16.1-94.01. When and how satisfaction entered on judgment.**

73 A. When ~~payment or~~ satisfaction of any judgment rendered in a court not of record is made, the
74 judgment creditor shall by himself, or his agent or attorney, give written notice of such ~~payment or~~
75 satisfaction, within ~~thirty~~ 30 days of receipt, to the clerk of the court in which the judgment was
76 rendered. Such notice shall include the docket number, the names of the parties, the date and amount of
77 the judgment, and the date of the ~~payment or~~ satisfaction. The clerk of the court shall then mark the
78 judgment satisfied. *For any money judgment marked as satisfied pursuant to this section, nothing herein*
79 *shall satisfy an unexecuted order of possession entered pursuant to § 8.01-126.*

80 B. If the judgment creditor fails to comply with subsection A, the judgment debtor, his heirs or
81 personal representatives, may, on motion, after ~~ten~~ 10 days' notice thereof to the judgment creditor, or
82 his assignee, his personal representative, or his agent or attorney, apply to the court in which the
83 judgment was rendered to have the judgment marked satisfied. Upon proof that the judgment has been
84 ~~paid, discharged or otherwise~~ satisfied, the clerk shall mark the judgment satisfied. If the judgment
85 creditor or his legal representatives cannot be reasonably located, the notice may be published and
86 posted as an order of publication is required to be published and posted under §§ 8.01-316 and
87 8.01-317.

88 C. The cost of such proceedings, including reasonable ~~attorney's~~ attorney fees and the cost of
89 publication, may be ordered to be paid by the judgment creditor.