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## HOUSE BILL NO. 1811

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 8.01-126, 8.01-128, 8.01-129, and 16.1-94.01 of the Code of Virginia, relating to initial hearings on a summons for unlawful detainer; plaintiff's possession of property at initial return date; immediate issuance of writs of possession in certain case judgments; written notice of satisfaction rendered in a court not of record.*

Patron—Loupassi

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-126, 8.01-128, 8.01-129, 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 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, *but in no event more than 30 days from the date of filing*. 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 court shall award a money judgment for any amounts contracted for in the rental agreement 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 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. *The court shall award a money judgment for any amounts contracted for in the rental agreement due as of the date of the hearing.*

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

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59 and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect  
60 the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

61 **§ 8.01-128. Verdict and judgment; damages.**

62 A. If it appears that the plaintiff was forcibly or unlawfully turned out of possession, or that it was  
63 unlawfully detained from him, the verdict or judgment shall be for the plaintiff for the premises, or such  
64 part thereof as may be found to have been so held or detained. The verdict or judgment shall also be for  
65 such damages as the plaintiff may prove to have been sustained by him by reason of such forcible or  
66 unlawful entry, or unlawful detention, of such premises, and such rent as he may prove to have been  
67 owing to him.

68 B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the  
69 property unlawfully entered or unlawfully detained and be issued a writ of possession; ~~and continue the~~  
70 ~~case for up to 120 days to establish final rent and damages.~~ If the plaintiff elects to proceed under this  
71 ~~section subsection~~, the judge shall hear evidence as to the issue of possession on the initial court date  
72 ~~and.~~

73 *Further, if the plaintiff elects to proceed under this subsection, the plaintiff may continue the case for*  
74 *up to 120 days to establish final rent and damages, regardless of whether a judgment for possession is*  
75 *entered or writ of possession issued on the initial court date. The court shall then hear evidence on the*  
76 *final rent and damages at the hearing set on the continuance date, unless the plaintiff requests otherwise*  
77 *or the judge rules otherwise. The court shall award a money judgment for any amounts contracted for in*  
78 *the rental agreement.* Nothing in this ~~section subsection~~ shall preclude a defendant who appears in court  
79 at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

80 If under this section an appeal is taken as to possession, the entire case shall be considered appealed.  
81 The plaintiff shall, in the instance of a continuance taken under this section, mail to the defendant at the  
82 defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the  
83 continuance date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking  
84 judgment for additional sums. A copy of such notice shall be filed with the court.

85 C. No verdict or judgment rendered under this section shall bar any separate concurrent or future  
86 action for any such damages or rent as may not be so claimed.

87 **§ 8.01-129. Appeal from judgment of general district court.**

88 An appeal shall lie from the judgment of a general district court, in any proceeding under this article,  
89 to the circuit court in the same manner and with like effect and upon like security as appeals taken  
90 under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal  
91 shall be taken within 10 days and the security approved by the court from which the appeal is taken.  
92 Notwithstanding the provisions of § 16.1-106 et seq. the bond shall be posted and the writ tax paid  
93 within 10 days of the date of the judgment. Unless otherwise specifically provided in the court's order,  
94 no writ of execution shall issue on a judgment for possession until the expiration of this 10-day period,  
95 except in cases of judgment (i) of default ~~(+)~~; (ii) wherein the case arises out of a trustee's deed  
96 following foreclosure; ~~(+)~~; (iii) for the nonpayment of rent where the writ of execution shall issue  
97 immediately upon entry of judgment for possession, if requested by the plaintiff; ~~or (iii)~~ (iv) for  
98 immediate nonremediable terminations where the writ of execution shall issue immediately upon entry of  
99 judgment for possession, if requested by the plaintiff. When the appeal is taken by the defendant, he  
100 shall be required to give security also for all rent which has accrued and may accrue upon the premises,  
101 but for not more than one year's rent, and also for all damages that have accrued or may accrue from  
102 the unlawful use and occupation of the premises for a period not exceeding three months. Trial by jury  
103 shall be had upon application of any party.

104 **§ 16.1-94.01. When and how satisfaction entered on judgment.**

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

112 B. If the judgment creditor fails to comply with subsection A, the judgment debtor, his heirs or  
113 personal representatives, may, on motion, after 10 days' notice thereof to the judgment creditor, or his  
114 assignee, his personal representative, or his agent or attorney, apply to the court in which the judgment  
115 was rendered to have the judgment marked satisfied. Upon proof that the judgment has been satisfied,  
116 the clerk shall mark the judgment satisfied. If the judgment creditor or his legal representatives cannot  
117 be reasonably located, the notice may be published and posted as an order of publication is required to  
118 be published and posted under §§ 8.01-316 and 8.01-317.

119 C. The cost of such proceedings, including reasonable attorney fees and the cost of publication, may  
120 be ordered to be paid by the judgment creditor.