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SENATE BILL NO. 1448

Offered January 9, 2019

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A BILL to amend and reenact §§ 8.01-128, 8.01-129. 8.01-293, 8.01-470, 8.01-471, 16.1-69.40, 17.1-272, 55-225.01, 55-225.1, 55-246.1, 55-248.3:1, 55-248.35, 55-248.38:1, 55-248.38:2, and 58.1-3947 of the Code of Virginia, relating to eviction; writs of possession and eviction.

Patrons—Locke, Mason and McClellan

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-128, 8.01-129. 8.01-293, 8.01-470, 8.01-471, 16.1-69.40, 17.1-272, 55-225.01, 55-225.1, 55-246.1, 55-248.3:1, 55-248.35, 55-248.38:1, 55-248.38:2, and 58.1-3947 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-128. Verdict and judgment; damages.

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

B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the property unlawfully entered or unlawfully detained and be issued ~~a writ~~ *an order* of possession at the initial hearing on a summons for unlawful detainer, upon evidence presented by the plaintiff to the court. At the initial hearing, upon request of the plaintiff, the court shall bifurcate the unlawful detainer case and set a continuance date no later than 120 days from the date of the initial hearing to determine final rent and damages. On such continuance date, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the (i) notice of hearing to establish final rent and damages mailed to the last known address of the defendant and filed with the court at least 15 days prior to the continuance date as provided herein, (ii) evidence presented to the court, and (iii) amounts contracted for in the rental agreement. Nothing in this subsection shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

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

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

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

A. An appeal shall lie from the judgment of a general district court, in any proceeding under this article, to the circuit court in the same manner and with like effect and upon like security as appeals taken under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal shall be taken within 10 days and the security approved by the court from which the appeal is taken. Notwithstanding the provisions of § 16.1-106 et seq., the bond shall be posted and the writ tax paid within 10 days of the date of the judgment.

B. In any unlawful detainer case filed under § 8.01-126, if a judge grants the plaintiff a judgment for possession of the premises, upon request of the plaintiff, the judge shall further order that the writ *of eviction* issue immediately upon entry of judgment for possession. In such case, the clerk shall deliver the writ *of eviction* to the sheriff, who shall then, at least 72 hours prior to execution of such writ, serve notice of intent to execute the writ, including the date and time of eviction, as provided in § 8.01-470. In no case, however, shall the sheriff evict the defendant from the dwelling unit prior to the expiration of the defendant's 10-day appeal period. If the defendant perfects an appeal, the sheriff shall return the writ to the clerk who issued it.

When the appeal is taken by the defendant, he shall be required to give security also for all rent which has accrued and may accrue upon the premises, but for not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises

for a period not exceeding three months. Trial by jury shall be had upon application of any party.

§ 8.01-293. Authorization to serve process, capias or show cause order; execute writ of possession or eviction and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295;

2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. For purposes of this subdivision, an investigator employed by an attorney for the Commonwealth or employed by the Indigent Defense Commission, who within 10 years immediately prior to being employed by the attorney for the Commonwealth or Indigent Defense Commission was an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth and retired or resigned from his position as a law-enforcement officer in good standing, shall not be considered to be a party or otherwise interested in the subject matter in controversy while engaged in the performance of his official duties, provided that the sheriff in the jurisdiction where process is to be served has agreed that such investigators may serve process. If a sheriff has agreed that such investigators may serve process, then investigators employed by either an attorney for the Commonwealth or the Indigent Defense Commission may serve process. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; or

3. A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including ~~an order or~~ *a* writ of ~~possession~~ *eviction* arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

§ 8.01-470. Writs on judgments for specific property.

On a judgment for the recovery of specific property~~, real or personal~~, a writ of possession *for personal property or a writ of eviction for real property* may issue for the specific property *pursuant to an order of possession entered by a court of competent jurisdiction*, which shall conform to the judgment as to the description of the property and the estate, title, and interest recovered, and there may also be issued a writ of fieri facias for the damages or profits and costs. In cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of ~~possession~~ *eviction* has been delivered to be executed shall, at least 72 hours before execution, serve notice of intent to execute, including the date and time of execution, as well as the rights afforded to tenants in §§ 55-237.1 and 55-248.38:2, together with a copy of the writ attached, on the defendant in person or, if the party to be served is not found at the specific property for which a writ of ~~possession~~ *eviction* has been issued, then service shall be effected by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such property. The execution of the writ of ~~possession~~ *eviction* by the sheriff should occur within 15 calendar days from the date the writ of ~~possession~~ *eviction* is received by the sheriff, or as soon as practicable thereafter, but in no event later than 30 days from the date the writ of ~~possession~~ *eviction* is issued. *An order of possession shall remain valid for 180 days from the date granted by the court. If a plaintiff cancels a writ of eviction, such plaintiff may request other writs of eviction during such 180-day period.* In cases of unlawful entry and detainer and of ejectment, whenever the officer to whom a writ of ~~possession~~ *eviction* has been delivered to be executed finds the premises locked, he may, after declaring at the door the cause of his coming and demanding to have the door opened, employ reasonable and necessary force to break and enter the door and put the plaintiff in possession. The execution of the writ of ~~possession~~ *eviction* shall be effective against the tenants named in the writ of ~~possession~~ *eviction* and their authorized occupants, guests or invitees, and any trespassers in the premises. And an officer having a writ of possession for specific personal property, if he finds locked or fastened the building or place wherein he has reasonable cause to believe the property specified in the writ is located, may in the daytime, after notice to the defendant, his agent or bailee, break and enter such building or place for the purpose of executing such writ.

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

Writs of ~~possession~~ *eviction*, in case of unlawful entry and detainer, shall be issued within ~~one year~~ *180 days* from the date of judgment for possession and shall be made returnable within 30 days from

the date of issuing the writ. *Notwithstanding any other provision of law, a writ of eviction not executed within 30 days from the date of issuance shall be vacated as a matter of law without further order of the court that entered the order of possession and no further action shall be taken by the clerk.* 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 *for possession*, the landlord has ~~accepted rent payments without reservation~~ *entered into a new written rental agreement with the tenant*, as described in § 55-248.34:1. A writ of ~~possession~~ *eviction* may be requested by the plaintiff or the plaintiff's attorney or agent.

§ 16.1-69.40. Powers and duties of clerks; civil liability.

The clerk and deputy clerks shall be conservators of the peace within the territory for which the court has jurisdiction, and may, within such judicial district, issue warrants, detention orders, and other processes, original, mesne and final, both civil and criminal, commit to jail or other detention facility, or admit to bail upon recognizance, persons charged with crimes or before the court on civil petition, subject to the limitations set forth by law, and issue subpoenas for witnesses, writs of fieri facias and writs of possession *and eviction*, attachments and garnishments and abstracts of judgments. A record made in the performance of the clerk's official duties may be authenticated as a true copy by the clerk or by a deputy clerk without additional authentication by the judge to whom the clerk reports, notwithstanding the provisions of subsection B of § 8.01-391.

No clerk or deputy clerk shall issue any warrant or process based on complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward. They may take affidavits and administer oaths and affirmations, take and certify depositions in the same manner as a notary public, perform such other notarial acts as allowed under § 47.1-12, take acknowledgments to deeds or other writings for purposes of recordation, and issue all other legal processes which may be issued by the judge of such court and exercise such other powers and perform such other duties as are conferred or imposed upon them by law. The clerk may also issue to interested persons informational brochures authorized by a judge of such court explaining the legal rights of such persons.

No clerk or deputy clerk shall be civilly liable for providing information or assistance that is within the scope of his duties.

The clerk shall develop, implement and administer procedures necessary for the efficient operation of the clerk's office, keep the records and accounts of the court, supervise nonjudicial personnel and discharge such other duties as may be prescribed by the judge.

§ 17.1-272. Process and service fees generally.

A. The fee for process and service in the following instances shall be $12:

1. Service on any person, firm or corporation, an order, notice, summons or any other civil process, except as herein otherwise provided, and for service on any person, firm, or corporation any process when the body is not taken and making a return thereof, except that no fee shall be charged for service pursuant to § 2.2-4022.

2. Summoning a witness or garnishee on an attachment.

3. Service on any person of an attachment or other process under which the body is taken and making a return thereon.

4. Service of any order of court not otherwise provided for, except that no fees shall be charged for protective orders issued pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.

5. Making a return of a writ of fieri facias where no levy is made or forthcoming bond is taken.

6. Summoning a witness in any case in which custody or visitation of a minor child or children is at issue.

B. The fees for process and service in the following instances shall be $25:

1. Service and publication of any notice of a publicly-advertised public sale.

2. Service of a writ of possession *or writ of eviction*, except that there shall be an additional fee of $12 for each additional defendant.

3. Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to § 8.01-478.

4. Service of a declaration in ejectment on any person, firm or corporation, except that there shall be an additional fee of $12 for each additional defendant.

5. Levying distress warrant or an attachment.

6. Levying an execution.

C. The process and service fee for serving any papers returnable out of state shall be $75, except no fees shall be charged for the service of papers in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protective order or a petition for a protective order. A victim of domestic violence, stalking, or sexual assault shall not bear the costs associated with the filing of criminal charges against the offender, and no victim shall bear the costs associated with the filing, issuance, registration, or service of a warrant,

protective order, petition for a protective order, or witness subpoena, issued inside or outside the Commonwealth.

D. The fees set out in this section shall be allowable for services provided by such officers in the circuit and district courts.

§ 55-225.01. Sections applicable only to certain residential tenancies.

A. Residential tenancies. The Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) shall apply to occupancy in any single-family residential dwelling unit and any multifamily dwelling unit located in Virginia unless exempted pursuant to the provisions of this section. Occupancy in a public housing unit or other housing unit that is a residential dwelling unit is subject to this chapter, however, if the provisions of this chapter are inconsistent with the regulations of the Department of Housing and Urban Development, such regulations shall control.

B. Exempt residential dwelling units.

1. Where the landlord is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement, such landlord may opt out of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) by so stating in a rental agreement with a tenant. Such residential dwelling units shall be exempt from the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), and the provisions of §§ 55-225.01 through 55-225.48 shall be applicable.

2. Where occupancy is under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

C. Tenancies and occupancies that are not residential tenancies. The following occupancies are not residential tenancies under this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who is not required to pay rent pursuant to a rental agreement; or

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days.

D. Occupancy in hotel, motel, and extended stay facility.

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of ~~possession~~ *eviction* issued pursuant to such action, which would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth.

§ 55-225.1. Recovery of possession limited.

A landlord may not recover or take possession of a residential dwelling unit by (i) willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other

essential service required to be supplied by the landlord under a rental agreement or (ii) refusal to permit the tenant access to such unit unless such refusal is pursuant to an unlawful detainer action from a court of competent jurisdiction and the execution of a writ of ~~possession~~ *eviction* issued pursuant thereto. A provision included in a rental agreement for a dwelling unit authorizing action prohibited by this section is unenforceable.

§ 55-246.1. Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55-248.4, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city wherein the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, or for final rent and damages under § 8.01-128, in any general district court where venue is proper under § 8.01-259, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, ~~writ~~ *order* of possession, *writ of eviction,* or writ of fieri facias arising out of a landlord tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03. However, nothing shall be construed as preventing a nonlawyer from requesting relief from the court as provided by law or statute when such nonlawyer is before the court on one of the actions specified herein.

§ 55-248.3:1. Applicability of chapter.

A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality, its boards and commissions or other instrumentalities, or the courts of the Commonwealth. Occupancy in a public housing unit or other housing unit that is a residential dwelling unit is subject to this chapter, however, if the provisions of this chapter are inconsistent with the regulations of the Department of Housing and Urban Development, such regulations shall control.

B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily residential dwelling units and multifamily dwelling unit located in the Commonwealth. However, where the landlord is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement, such landlord may opt out of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) by so stating in a rental agreement with a tenant. Such residential dwelling units shall be exempt from this chapter and the provisions of §§ 55-225.01 through 55-225.48 shall be applicable.

The provisions of this chapter shall not apply to instances where occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

C. Tenancies and occupancies that are not residential tenancies. The following occupancies are not residential tenancies under this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement; or

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or an former employee whose occupancy continues less than 60 days.

D. Occupancy in hotel, motel, and extended stay facility.

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of ~~possession~~ *eviction* issued pursuant to such action, which

would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth.

§ 55-248.35. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees as provided in § 55-248.31, and the cost of service of any notice under § 55-225 or § 55-248.31 or process by a sheriff or private process server which cost shall not exceed the amount authorized by § 55-248.31:1, which claims may be enforced, without limitation, by the institution of an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for such rent as would have accrued until the expiration of the term thereof or until a tenancy pursuant to a new rental agreement commences, whichever first occurs; provided that nothing herein contained shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined herein, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of ~~possession~~ *eviction*, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § 55-248.15:1.

§ 55-248.38:1. Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or in any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination, (ii) given written notice to the tenant in accordance with § 55-248.33, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant shall have the right to remove his personal property from the dwelling unit or the premises at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1. The provisions of this section shall not be applicable if the landlord has been granted ~~a writ~~ *an order* of possession for the premises in accordance

with Title 8.01 and execution of ~~such~~ *a* writ *of possession* has been completed pursuant to § 8.01-470.

Nothing herein shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a dwelling unit or on the premises leased to such tenant and the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or from any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff *with the writ of eviction* setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.

§ 58.1-3947. Lease of real estate for collection of taxes.

Any real estate in the county, city or town belonging to the person or estate assessed with taxes due on such real estate may be rented or leased by the treasurer, sheriff, constable or collector, privately or at public outcry, after due publication, in the discretion of such treasurer, sheriff, constable or collector, either at the front door of the courthouse or on the premises or at some public place in the community where the premises are situated, after giving not less than fifteen days' notice by printed or written notices posted at the front door of the courthouse and at three or more places in the neighborhood of the real estate to be leased. Such leasing shall be for a term not exceeding one year and for cash sufficient to pay the taxes due on the real estate so rented and the costs and charges of advertising and leasing. When a lease is effected, the treasurer, collector, sheriff or constable leasing such real estate shall put the lessee in possession thereof and for such purpose shall have like powers as those exercised by a sheriff acting under a writ of possession *or writ of eviction*.