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HOUSE BILL NO. 2229

Offered January 13, 2021

Prefiled January 13, 2021

A BILL to amend and reenact §§ 54.1-2108.1 and 55.1-1237 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; responsibilities of real estate brokers; foreclosure of single-family residential dwelling units.

Patron—Simon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2108.1 and 55.1-1237 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2108.1. Protection of escrow funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of ~~the~~ *such* licensee is holding escrow funds for the owner of real property and such property is foreclosed upon, the licensee or ~~an~~ agent ~~of the licensee~~ shall have the right to file an interpleader action pursuant to § 16.1-77.

2. If ~~there is in effect at the date of the foreclosure sale,~~ *a single-family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is* a real estate purchase contract to buy ~~the property foreclosed upon~~ *such property* and ~~the real estate purchase~~ *such* contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the parties.

3. If ~~there is in effect at the date of the foreclosure sale, a tenant in~~ a *single-family* residential dwelling unit *is* foreclosed upon and *there is a tenant in the dwelling unit on the date of the foreclosure sale and* the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

4. If ~~there is in effect at the date of the foreclosure sale a tenant in~~ a *single-family* residential dwelling unit *is* foreclosed upon pursuant to § 55.1-1237~~, the foreclosure acts as a termination of the rental agreement by the landlord and the tenant may remain in possession of such dwelling.~~ *and there is a tenant in such dwelling unit on the date of the foreclosure sale, the successor in interest who acquires the dwelling unit at the foreclosure sale shall assume such interest subject to the following:*

a. If the successor in interest acquires the dwelling unit for the purpose of occupying such unit as his primary residence, the successor in interest shall provide written notice to the tenant, in accordance with the provisions of § 55.1-1202, notifying the tenant that the rental agreement is terminated and that the tenant must vacate the dwelling unit on a date not less than 90 days after the date of such written notice.

b. If the successor in interest acquires the dwelling unit for any other purpose, the successor in interest shall acquire the dwelling unit subject to the rental agreement and the tenant shall be permitted to occupy the dwelling unit for the remaining term of the lease, provided, however, that the successor in interest may terminate the rental agreement pursuant to § 55.1-1245 or the terms of the rental agreement. The successor in interest shall provide written notice of such termination to the tenant in accordance with the provisions of § 55.1-1202.

If rent is paid to a real estate licensee acting on behalf of the landlord as a managing agent, such property management agreement having been entered into prior to and in effect at the time of the foreclosure sale, the managing agent may collect the rent and shall place it into an escrow account by the end of the fifth business banking day following receipt.

5. If ~~there is in effect at the date of the foreclosure sale~~ *a single-family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is* a written property management

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agreement between ~~the~~ *a* landlord and a real estate licensee licensed pursuant to the provisions of § 54.1-2106.1, the foreclosure shall convert the property management agreement into a month-to-month agreement between the successor landlord and the real estate licensee acting as a managing agent, except in the event that the terms of the original property management agreement between the landlord and the real estate licensee acting as a managing agent require an earlier termination date. Unless altered by the parties, the terms of the original property management agreement that existed between the landlord and the real estate licensee acting as a managing agent shall govern the agreement between the successor landlord and the real estate licensee acting as a managing agent. The property management agreement may be terminated by either party upon provision of written notice to the other party at least 30 days prior to the intended termination date. Any funds received or held by the real estate licensee acting as a managing agent shall be disbursed only in accordance with the terms of the property management agreement or as otherwise provided by law.

B. Notwithstanding any other provision of law:

1. Any rent paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, regardless of when received, unless otherwise agreed to in writing by the principals to a lease transaction.

2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.

3. Any application deposit as defined by § 55.1-1200 paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease transaction.

4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions, as applicable.

5. Except in the event of foreclosure, if a real estate licensee acting on behalf of a landlord client as a managing agent elects to terminate the property management agreement, the licensee may transfer any funds held in escrow by the licensee on behalf of the landlord client to the landlord client without his consent, provided that the real estate licensee provides written notice to each tenant that the funds have been so transferred. In the event of foreclosure, a real estate licensee shall not transfer any funds to a landlord client whose property has been foreclosed upon.

6. A real estate licensee acting on behalf of a landlord client as a managing agent who complies with the provisions of this section shall have immunity from any liability for such compliance, in the absence of gross negligence or intentional misconduct.

§ 55.1-1237. Notice to tenant in event of foreclosure.

A. The landlord of a dwelling unit used as a single-family residence shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.

C. If ~~there is in effect at the date of the foreclosure sale a tenant in a dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the owner. In such case, the tenant may remain in possession of such dwelling unit as a month-to-month tenant on the terms of the terminated rental agreement until the successor owner gives a notice of termination of such month-to-month tenancy. If the successor owner elects to terminate the month-to-month tenancy, written notice of such termination shall be given in accordance with the rental agreement or the provisions of § 55.1-1202 or 55.1-1410, as applicable~~ *the dwelling unit is foreclosed upon and there is a tenant in such dwelling unit on the date of the foreclosure sale, the successor in interest who acquires the dwelling unit at the foreclosure sale shall assume such interest subject to the following:*

1. If the successor in interest acquires the dwelling unit for the purpose of occupying such unit as his primary residence, the successor in interest shall provide written notice to the tenant, in accordance with the provisions of § 55.1-1202, notifying the tenant that the rental agreement is terminated and that the tenant must vacate the dwelling unit on a date not less than 90 days after the date of such written

notice.

2. If the successor in interest acquires the dwelling unit for any other purpose, the successor in interest shall acquire the dwelling unit subject to the rental agreement and the tenant shall be permitted to occupy the dwelling unit for the remaining term of the lease, provided, however, that the successor in interest may terminate the rental agreement pursuant to § 55.1-1245 or the terms of the rental agreement. The successor in interest shall provide written notice to the tenant, in accordance with the provisions of § 55.1-1202, informing the tenant of such.

~~D. Unless or until the successor owner terminates the month-to-month tenancy, the~~ *The* terms of the terminated rental agreement remain in effect except that the tenant shall make rental payments (i) to the successor owner as directed in a written notice to the tenant in this subsection; (ii) to the managing agent of the owner, if any, or successor owner; or (iii) into a court escrow account pursuant to the provisions of § 55.1-1244; however, there is no obligation of a tenant to file a tenant's assertion and pay rent into escrow. Where there is not a managing agent designated in the ~~terminated~~ rental agreement, the tenant shall remain obligated for payment of the rent but shall not be held to be delinquent or assessed a late charge until the successor owner provides written notice identifying the name, address, and telephone number of the party to which the rent should be paid.

~~E. The successor owner may enter into a new rental agreement with the tenant in the dwelling unit, in which case, upon the commencement date of the new rental agreement, the month-to-month tenancy shall terminate.~~

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