

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 8.01-126 of the Code of Virginia, relating to summons for unlawful detainer;*
 3 *additional information; legal resources; plain-language overview of process.*

4 [H 593]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 8.01-126 of the Code of Virginia is amended and reenacted as follows:**8 **§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general**
 9 **district court.**10 A. For the purposes of this section, "termination notice" means a notice given under § 55.1-1245 or other
 11 notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of
 12 termination given by a landlord to a tenant of a nonresidential premises.13 B. In any case when possession of any house, land or tenement is unlawfully detained by the person in
 14 possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to
 15 a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize
 16 the removal of the tenant or other person in possession, describing such premises; and thereupon such
 17 magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The
 18 process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in
 19 § 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
 20 determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate
 21 a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), the initial
 22 hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of
 23 filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as
 24 soon as practicable, but in no event later than 30 days after the date of the filing. If the plaintiff requests that
 25 the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on
 26 a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10
 27 days before the return day thereof. If a summons for unlawful detainer is filed by an owner of a residential
 28 single family dwelling unit in the Commonwealth and the court finds based upon the evidence that (i) no
 29 rental agreement exists or has ever existed between the owner and the occupant; (ii) the occupant occupies
 30 such dwelling unit without permission of such owner; and (iii) the owner has given such occupant a written
 31 notice to vacate such dwelling unit at least 72 hours prior to the date of filing, an emergency hearing on such
 32 summons shall occur as soon as practicable, but not more than 14 days from the date of filing. If the case
 33 cannot be heard within 14 days from the date of filing, the emergency hearing shall be held as soon as
 34 practicable, but in no event later than 30 days after the date of the filing.35 C. 1. Any summons issued pursuant to the provisions of this section shall contain a notice to the tenant
 36 that, pursuant to the provisions of § 18.2-465.1, it is unlawful for his employer to discharge him from
 37 employment or take any adverse personnel action against him as a result of his absence from employment due
 38 to appearing at any initial or subsequent hearing on such summons, provided that he has given reasonable
 39 notice of such hearing to his employer.40 2. Any summons issued pursuant to the provisions of this section may, with the approval of the chief judge
 41 of the general district court or the chief judge of the circuit court, have attached additional information,
 42 prepared by the Commonwealth, the locality in which such hearing is to be held, or a nonprofit organization
 43 serving the jurisdiction in which such hearing is to be held, regarding (i) legal resources available to the
 44 plaintiff and defendant, (ii) a plain-language overview of the unlawful detainer process, and (iii) the Eviction
 45 Diversion Program eligibility and applicability as outlined in Article 7 (§ 55.1-1260 et seq.) of Chapter 12 of
 46 Title 55.1.47 D. The court shall not enter an order of possession unless the plaintiff, plaintiff's attorney, or agent has
 48 presented a copy of a proper termination notice issued to the defendant and the court has entered such notice
 49 into evidence.50 E. Notwithstanding any rule of court or provision of law to the contrary, the plaintiff, plaintiff's attorney,
 51 or agent in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper
 52 document or paper printout of an electronically stored document including a copy of the original lease or
 53 other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such
 54 document is a true and accurate copy of the original lease. If the defendant fails to appear in court, the
 55 plaintiff, plaintiff's attorney, or agent may introduce into evidence by an affidavit or sworn testimony a
 56 statement of the amount of outstanding rent, late charges, attorney fees, costs, and any other charges or

57 damages as contracted for in the rental agreement that are due and owing as of the date of the hearing. The
58 plaintiff, plaintiff's attorney, or agent shall advise the court of any payments made by or on behalf of the
59 defendant that result in a reduction of the amount due and owing to the plaintiff.

60 F. 1. The plaintiff may include on the summons for unlawful detainer a request for all amounts due and
61 owing as of the date of the hearing and the approximate amount the defendant may owe as of the date of the
62 hearing if the defendant makes no payments prior to the date of such hearing. Notwithstanding any rule of
63 court or provision of law to the contrary, if such request is made on the summons for unlawful detainer, the
64 court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in
65 accordance with the evidence and the amounts contracted for in the rental agreement. If the plaintiff makes
66 such a request and additional amounts become due and owing prior to the final disposition of a pending
67 unlawful detainer, a plaintiff may amend the amount in an unlawful detainer to request all amounts due and
68 owing as of the date of final disposition.

69 If, however, the plaintiff has not included on the summons for unlawful detainer a request for all amounts
70 due and owing as of the date of the hearing, the court may permit the plaintiff to amend the amount requested
71 on the summons for unlawful detainer upon finding that (i) the evidence accurately sets forth the amount due
72 and owing to the plaintiff, (ii) the plaintiff provided the defendant with a separate written notice of additional
73 amounts due and owing as of the date of the hearing and of the plaintiff's intent to amend the amount
74 requested on the summons, and (iii) the defendant had the opportunity at court to object to any additional
75 amounts claimed.

76 2. If the plaintiff requests on the summons for unlawful detainer all amounts due and owing as of the date
77 of the hearing or if the court grants an amendment of the amounts requested on the summons for unlawful
78 detainer, the plaintiff shall not subsequently file additional unlawful detainers or warrants in debt against the
79 defendant for such additional amounts if those amounts could have been included in the amended amount.
80 Any such subsequent unlawful detainers or warrants in debt filed for amounts that were included in the
81 amended amount shall be dismissed. Nothing in this section shall preclude the plaintiff from filing an
82 unlawful detainer for a non-rent lease violation during the pendency of an unlawful detainer for nonpayment
83 of rent or from filing a warrant in debt for amounts unrelated to the unlawful detainer against the defendant.

84 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement or lease
85 provides that rent is due and payable on the first of the month in advance for the entire month, at the request
86 of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing shall include
87 the rent due for the entire month in which the hearing is held, and rent shall not be prorated as of the actual
88 court date. Otherwise, the rent shall be prorated as of the date of the hearing. However, nothing herein shall
89 be construed to permit a landlord to collect rent in excess of the amount stated in such rental agreement or
90 lease. If a money judgment has been granted for the amount due for the month of the hearing pursuant to this
91 section and the landlord re-rents such dwelling unit and receives rent from a new tenant prior to the end of
92 such month, the landlord is required to reflect the applicable portion of the judgment as satisfied pursuant to
93 § 16.1-94.01.

94 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner
95 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such tenancy
96 may be terminated by a written termination notice from the successor owner given to such tenant at least
97 three days prior to the effective date of termination. Upon the expiration of the three-day period, the
98 successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for
99 payment of fair market rental from the date of such foreclosure until the date the tenant vacates the dwelling
100 unit, as well as damages, and for payment of reasonable attorney fees and court costs.