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HOUSE BILL NO. 2653

Offered January 13, 2003

A BILL to amend and reenact § 55-66.3 of the Code of Virginia, relating to the penalty for failure to properly release a deed of trust.

Patrons—Albo, Almand, Black, Kilgore and Reese; Senator: Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-66.3 of the Code of Virginia is amended and reenacted as follows:

§ 55-66.3. Release of deed of trust or other lien.

A. 1. When payment or satisfaction is made of a debt secured by mortgage, deed of trust, vendor's lien, or other lien, or when any one or more of the obligations representing at least ~~twenty-five~~ 25 percent of the whole amount secured by any such lien, but less than the whole number of the obligations so secured, when the debt secured thereby is evidenced by ~~two~~ 2 or more separate written obligations sufficiently described in the instrument creating the lien, have been fully paid, the lien creditor, unless a proper release deed has been recorded, shall, within ~~ninety~~ 90 days after notice that the full or partial payment or satisfaction has been made, cause such payment and release of lien to be reflected on a certificate of satisfaction or certificate of partial satisfaction in form sufficient for recordation. If the notice of full or partial payment or satisfaction includes a current name and address of the person to whom the certificate of satisfaction or certificate of partial satisfaction should be sent, the lien creditor shall deliver the certificate to such name and address; however, if the settlement agent or obligor fails to provide a name and address for delivery to the lien creditor, the lien creditor shall deliver the certificate of satisfaction to the appropriate clerk's office with the clerk's fee necessary for recording by certified mail, return receipt requested, or by hand delivery, when there is written proof of receipt from the clerk's office; or by courier hand delivery, when there is written proof of receipt from the clerk's office. Any lien creditor who fails to satisfy the requirements of this subsection shall forfeit \$500 to the lien obligor. *Such lien obligor shall not assign the right to the \$500 penalty to another party.* Following the ~~ninety~~ 90-day period, if the amount forfeited is not paid within ~~ten~~ 10 business days after written demand for payment, *sent to the lien creditor by certified mail*, the lien creditor shall pay any court costs and reasonable attorney's fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond or other evidence of debt secured by such mortgage, deed of trust, vendor's lien or other lien referred to in subdivision 1 or any interest therein, has been assigned or transferred to a party other than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien creditor for failure to comply with this subsection, as set forth in subdivision 1.

B. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney-in-fact, or any person to whom the instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with the certificate of satisfaction, by the creditor, or his duly authorized agent, attorney or attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when the debt was satisfied, entitled and authorized to receive the same.

C. And when so signed and the affidavit hereinbefore required has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance be by deed of trust or mortgage, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

D. As used in this section:

"CRESPA" means the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq.).

"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee or obligee of a note, bond or other evidence of debt and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond or other evidence of debt.

"Mortgage" means any mortgage, deed of trust or vendor's lien.

"Obligor's designee" shall include an attorney or other settlement agent closing a transaction which results in the obligor's loan being paid off.

"Payoff letter" means a written communication from the lien creditor or servicer stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.

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59 "Satisfactory evidence of the payment of the obligation secured by the mortgage" means (i) any one
60 of (a) the original canceled check or a copy of the canceled check, showing all endorsements, payable to
61 the lien creditor or servicer, as applicable, (b) confirmation in written or electronic form of a wire
62 transfer to the bank account of the lien creditor or servicer, as applicable, or (c) a bank statement in
63 written or electronic form reflecting completion of the wire transfer or negotiation of the check, as
64 applicable; and (ii) a payoff letter or other reasonable documentary evidence that the payment was to
65 effect satisfaction of the obligation secured or evidenced by the mortgage.

66 "Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

67 "Settlement agent" has the same meaning ascribed thereto in § 6.1-2.20, provided that a person shall
68 not be a settlement agent unless he is registered pursuant to § 6.1-2.26 and otherwise fully in
69 compliance with the applicable provisions of Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

70 E. Release of lien by settlement agent.

71 A settlement agent may release a mortgage in accordance with the provisions of this subsection (i) if
72 the obligation secured by the mortgage has been satisfied by payment made by the settlement agent and
73 (ii) whether or not the settlement agent is named as a trustee under the deed of trust or otherwise has
74 received the authority to release the lien.

75 1. Notice to lienholder.

76 a. After or accompanying payment in full of the obligation secured by a mortgage, a settlement agent
77 intending to release a mortgage pursuant to this subsection shall deliver to the lien creditor by certified
78 mail or guaranteed overnight delivery service a notice of intent to release the mortgage with a copy of
79 the payoff letter and a copy of the release to be recorded as provided in this subsection.

80 b. The notice of intent to release shall contain the name of the lien creditor and the servicer if loan
81 payments on the mortgage are collected by a servicer, the name of the settlement agent, and the date of
82 the notice. The notice of intent to release shall conform substantially to the following form:

83 NOTICE OF INTENT TO RELEASE

84 Notice is hereby given to you concerning the (mortgage) described on the (release of mortgage), a
85 copy of which is attached to this notice, as follows:

86 1. The undersigned has paid the obligation secured by the (mortgage) described above.

87 2. The undersigned will release the (mortgage) described in this notice unless, within ~~ninety~~90 days
88 from the date this notice is mailed by certified mail or guaranteed overnight delivery service, the
89 undersigned has received by certified mail or guaranteed overnight delivery service a notice stating that
90 a release of the (mortgage) has been recorded in the clerk's office or that the obligation secured by the
91 (mortgage) described above has not been paid, or the lien creditor or servicer otherwise objects to the
92 release of the mortgage. Notice shall be sent to the address stated on this form.

93 (Signature of settlement agent)

94 (Address of settlement agent)

95 (Telephone number of settlement agent)

96 (Current Virginia CRESPA registration number of settlement agent)

97 2. Certificate of satisfaction and affidavit of settlement agent.

98 a. If, within ~~ninety~~90 days following the day on which the settlement agent mailed or delivered the
99 notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send
100 by certified mail or guaranteed overnight delivery service to the settlement agent a notice stating that a
101 release of the mortgage has been recorded in the clerk's office or that the obligation secured by the
102 mortgage has not been paid in full or that the lien creditor or servicer otherwise objects to the release of
103 the mortgage, the settlement agent may execute, acknowledge and file with the clerk of court of the
104 jurisdiction wherein the mortgage is recorded a certificate of satisfaction, which shall include (i) the
105 affidavit described in subdivision 2 b of this subsection and (ii) a copy of the notice of intent to release
106 that was sent to the lender. The certificate of satisfaction shall include the settlement agent's currently
107 active CRESPA registration number issued by the Virginia State Bar and shall note that the individual
108 executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection.
109 After filing or recording the certificate of satisfaction, the settlement agent shall mail a copy of the
110 certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction
111 otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the
112 CRESPA registration number placed thereon or the failure to mail a copy of the recorded certificate of
113 satisfaction to the lien creditor or servicer and shall nevertheless release the mortgage described therein
114 as provided in this subsection.

115 b. The certificate of satisfaction used by the settlement agent shall include an affidavit certifying (i)
116 that the settlement agent has satisfied, and possesses satisfactory evidence of payment of the obligation
117 secured by the mortgage described in the certificate; (ii) that the lien of the mortgage may be released;
118 (iii) that the person executing the certificate is the settlement agent or is duly authorized to act on behalf
119 of the settlement agent; and (iv) that the notice of intent to release was delivered to the lien creditor or
120 servicer and the settlement agent received evidence of receipt of such notice by the lien creditor or

servicer. The affidavit shall be substantially in the following form:

AFFIDAVIT OF SETTLEMENT AGENT

The undersigned hereby certifies that, in accordance with the provisions § 55-66.3 of the Code of Virginia of 1950, as amended and in force on the date hereof (the "Code") (a) the undersigned is a settlement agent as defined in subsection D of § 55-66.3 of the Code or a duly authorized officer, director, member, partner or employee of such settlement agent; (b) the settlement agent has satisfied the obligation secured by the mortgage and possesses satisfactory evidence of the payment of the obligation secured by the mortgage described in the certificate recorded herewith; (c) the settlement agent delivered to the lien creditor or servicer in the manner specified in subdivision E 1 of § 55-66.3 of the Code the notice of intent to release and possesses evidence of receipt of such notice by the lien creditor or servicer; and (d) the lien of the mortgage is hereby released.

(Authorized signer)

3. Effect of filing.

When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and notarized as provided in this subsection, and accompanied by (i) the affidavit described in subdivision 2 b of this subsection, and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor or servicer shall operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust or mortgage, as a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

4. Effect of wrongful or erroneous certificate; damages.

a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a settlement agent does not relieve the party obligated to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for the debt or other obligations secured by the mortgage that is the subject of the wrongful or erroneous certificate of satisfaction.

b. A settlement agent that wrongfully or erroneously executes and files or records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

c. The procedure authorized by this subsection for the release of a mortgage shall constitute an optional method of accomplishing a release of a mortgage secured by property in this Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a mortgage shall not give rise to any liability or any cause of action whatsoever against a settlement agent or any title insurer by any obligated party or anyone succeeding to or assuming the interest of the obligated party.

5. Applicability.

a. The procedure authorized by this subsection for the release of a mortgage may be used to effect the release of a mortgage after July 1, 2002, regardless of when the mortgage was created, assigned or satisfied by payment made by the settlement agent.

b. This subsection applies only to transactions involving the purchase of or lending on the security of real estate located in this Commonwealth containing not more than ~~four~~4 residential dwelling units.

c. The procedure authorized by this subsection applies only to the full and complete release of a mortgage. Nothing in this subsection shall be construed to authorize the partial release of property from a mortgage or otherwise permit the execution or recordation of a certificate of partial satisfaction.

d. No settlement agent utilizing the process provided in this subsection for release of a mortgage may take an assignment from a lien obligor or his designee of the right to collect the \$500 penalty established in subsection A of this section.