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SENATE BILL NO. 504

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 55-60 of the Code of Virginia, relating to purchase money trusts.

Patron—Mims

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-60 of the Code of Virginia is amended and reenacted as follows:

§ 55-60. Meaning of phrases that may be included in such trust deed.

The following provisions may be incorporated in any such deed of trust in the respective short forms indicated, namely:

(1) The words "identified by trustee's signature," or words of like purport, shall be construed as if the deed set forth: "All of which said notes (or other obligations) bear the marginal signature of the trustee for the purpose of identification but for no other purpose whatever."

(2) The words "deferred purchase money," "*purchase money*" or words of like purport, shall be construed as if the deed set forth: "This deed of trust is a contemporaneous purchase money deed of trust and secures the payment of deferred purchase money due by the grantor upon the property hereby conveyed." *Any deed of trust securing a loan, the proceeds of which are used by the borrower to acquire real property, shall be deemed to be a purchase money deed of trust.*

(3) The words "exemptions waived," or words of like purport, shall be construed as if the deed set forth: "The grantor hereby waives the benefit of his exemptions as to the debt hereby secured and as to all other obligations which may be imposed upon him by the provisions of this deed of trust."

(4) The words "subject to all upon default," or words of like purport, shall be construed as if the deed set forth: "Should default be made in the payment of any part of the debt hereby secured, principal or interest, at the maturity of such part, or in the event of the breach of any of the covenants entered into or imposed upon the grantor, then the entire obligation of this deed of trust and the whole debt hereby secured shall, at the option of the beneficiaries, become forthwith due and payable."

(5) The words "renewal or extension permitted," or words of like purport, shall be construed as if the deed set forth: "The grantor hereby consents and agrees that the debt hereby secured, or any part thereof, may be renewed or extended beyond maturity as often as may be desired by agreement between the creditor and any subsequent owner of the property, and no such renewal or extension shall in any way affect the grantor's responsibility, whether as surety or otherwise."

(5a) The words "reinstatement permitted" or words of like purport shall be construed as if the deed set forth: "The grantor and any other party assuming liability hereunder hereby consent and agree that if the property conveyed hereby or a substantial portion thereof is transferred to any subsequent owner, and the creditor exercises the right to accelerate the debts secured hereby, the creditor may accept any delinquent payments or other cure of default giving rise to such acceleration from the then owner of the property or any other person and reinstate the indebtedness in accordance with the schedule of maturity as of the time of acceleration or upon such new schedule as may be agreed if renewal or extension are otherwise permitted and no such reinstatement shall in any way affect the liability of such prior parties, whether as surety or otherwise."

The words "renewal, extension or reinstatement permitted," or words of like purport, shall have the meaning ascribed to the individual words or phrases in this subsection (5a) and in subsection (5).

(6) The words "right of anticipation reserved," or words of like purport, shall be construed as if the deed set forth: "The grantor reserves the right to anticipate the payment of the debt hereby secured, or any part thereof which is represented by a separate note (or other obligation) at any interest period by the payment of principal and interest to the date of such anticipated payment only."

(7) The words "priority in direct order of maturity," or words of like purport shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the direct order of their maturities, each having priority over all others falling due after its maturity." And the words, "priority in inverse order of maturity," or words of like purport, shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the inverse order of their maturities, each having priority over all others falling due before its maturity."

(8) The words "insurance required dollars," or words of similar purport, shall be construed as if the deed set forth: "The grantor covenants that he will keep the improvements on the property insured against fire in some solvent insurance company approved by the trustee for the benefit of the

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59 beneficiaries hereunder in the sum of at least dollars, and will deposit with the trustee or
60 beneficiary the policies, with standard loss payable clauses with full contribution in favor of the trustee
61 as his interest may appear; and the grantor further covenants that in the event of his failure to keep the
62 property so insured and the policies so deposited, then the trustee or any beneficiary may, at his option,
63 effect such insurance and pay the premium thereon and the money so paid, with interest thereon, shall
64 become a part of the debt hereby secured, in the event of sale to be paid next after the expenses of
65 executing this trust, and shall be otherwise recoverable from the grantor as a debt, but there shall be no
66 obligation upon the trustee or beneficiary to effect such insurance."

67 (9) The words "substitution of trustee permitted," or words of like purport, shall be construed as if
68 the deed set forth: "Grantor grants unto the beneficiary or beneficiaries or to a majority in amount of the
69 holders of the obligations secured hereunder and to their assigns the right and power, under the
70 provisions of § 26-49, to appoint a substitute trustee or trustees."

71 (10) The words "any trustee may act," or words of similar purport, shall be construed as if the deed
72 set forth: "The grantors, and all interested in the obligations hereby secured, by accepting the benefits
73 hereof, agree that all authority, power and discretion hereinabove granted to the trustees may be
74 exercised by any of them, without any other, with the same effect as if exercised jointly by all of them."

75 (11) The words "this is a credit line deed of trust," or words of like purport, if in capital letters or
76 underscored and on the first page of the deed of trust and containing the name and address of the
77 noteholder, shall have the meaning set forth in § 55-58.2.