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SENATE BILL NO. 433

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Devolites Davis)

Senate Amendments in [] — February 10, 2006

A BILL to amend and reenact §§ 55-66.3 and 55-66.5 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 55 sections numbered 55-66.8 through 55-66.13 and 55-66.15, relating to mortgage satisfaction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-66.3 and 55-66.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 4 of Title 55 sections numbered 55-66.8 through 55-66.13 and 55-66.15 as follows:

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

A. 1. ~~After~~ Except as provided in Article 2.1 of this chapter, after full or partial payment or satisfaction has been made of a debt secured by a mortgage, deed of trust, vendor's lien, or other lien, or any one or more obligations representing at least 25 percent of the total amount secured by such lien, but less than the total number of the obligations so secured, or the debt secured is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed of trust prepared pursuant to § 55-58.2 only when the obligor or the settlement agent has paid the debt in full and requested that the instrument be released.

If the lien creditor receives notice from a settlement agent at the address identified in its payoff statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the certificate, within 90 days after receipt of such notice, to the settlement agent at the address specified in the notice received from the settlement agent.

If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by hand delivery or by courier hand delivery.

If the lien creditor has already delivered the certificate to the clerk's office by the time it receives notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff statement.

If the lien creditor has not, within 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or attorney may take an assignment of the right to the \$500 penalty. Following the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement, 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.).

ENGROSSED

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

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

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

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

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

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

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

80 E. Release of lien by settlement agent.

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

85 1. Notice to lienholder.

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

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

93 NOTICE OF INTENT TO RELEASE

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

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

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

103 (Signature of settlement agent)

104 (Address of settlement agent)

105 (Telephone number of settlement agent)

106 (Current Virginia CRESPA registration number of settlement agent)

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

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

CRESPA registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the mortgage described therein as provided in this subsection.

b. The certificate of satisfaction used by the settlement agent shall include an affidavit certifying (i) that the settlement agent has satisfied, and possesses satisfactory evidence of payment of the obligation secured by the mortgage described in the certificate; (ii) that the lien of the mortgage may be released; (iii) that the person executing the certificate is the settlement agent or is duly authorized to act on behalf of the settlement agent; and (iv) that the notice of intent to release was delivered to the lien creditor or 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~~ the Commonwealth containing not more than four 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.

§ 55-66.5. Releases made by court; costs and attorney fees.

A. Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after ~~twenty~~ 20 days' notice thereof to the person entitled to such encumbrance, apply to the circuit court of the county or city in whose clerk's office such encumbrance is recorded to have the same released or discharged. Upon proof that the encumbrance has been paid or discharged or upon a finding by the court that more than ~~fifteen~~ 15 years have elapsed since the

183 maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the
184 hearing, such court shall order the clerk to record a certificate of satisfaction or a certificate of partial
185 satisfaction which, when so recorded, shall operate as a release of such encumbrance.

186 All releases made prior to June 24, 1944, by any court under this section upon such presumption of
187 payment so arising and not rebutted shall be validated.

188 B. If the court finds that the person entitled to such encumbrance cannot with due diligence be
189 located, and that notice has been given such person in the manner provided by § 8.01-319 or 55-66.10,
190 or that tender has been made of the sum due thereon but has been refused for any reason by the party
191 or parties to whom due, the court may in its discretion order the sum due to be paid into court, to be
192 there held as provided by law, and to be paid upon demand to the person or persons entitled thereto.
193 The court shall order the same to be recorded as provided in subsection A hereof, which certificate of
194 satisfaction or certificate of partial satisfaction shall operate as a release of the encumbrance.

195 C. Upon a finding by the court that the holder of a mortgage or deed of trust which has been fully
196 paid or discharged has unjustifiably and without good cause failed or refused to release such mortgage
197 or deed of trust, the court, in its discretion, may order that costs and reasonable attorneys fees be paid to
198 the petitioning party. This subsection shall not preclude a separate suit by the petitioning party for actual
199 damages sustained by reason of such failure or refusal to release the encumbrance.

200 Article 2.1.

201 Mortgage Satisfaction.

202 § 55-66.8. Applicability.

203 *The procedure authorized by this article for the release of a mortgage using an automated electronic*
204 *recording system may be used to effect the release of a mortgage regardless of when the mortgage was*
205 *created, assigned, or satisfied by payment made by the settlement agent. The procedure authorized by*
206 *this section for the release of a mortgage shall constitute an optional method of accomplishing a release*
207 *of a mortgage secured by property in the Commonwealth.*

208 § 55-66.9. Definitions.

209 *As used in this article, unless the context requires otherwise:*

210 "Address for giving a notification" means, for the purpose of a particular type of notification, the
211 most recent address provided in a document by the intended recipient of the notification to the person
212 giving the notification. If the person giving the notification knows of a more accurate address, the term
213 means that address.

214 "Day" means calendar day.

215 "Document" means information that is:

216 1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is
217 retrievable in perceivable form, and

218 2. Eligible to be recorded in the land records maintained by the clerk.

219 "Electronic," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means
220 relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar
221 capabilities.

222 "Electronic document" means a document received by the clerk in electronic form.

223 "Electronic notarization" means an official act by a notary public in accordance with the Virginia
224 Notary Act (§ 47.1-1 et seq.) and § 55-118.3 with respect to an electronic document.

225 "Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.),
226 means an electronic sound, symbol, or process attached to or logically associated with a record and
227 executed or adopted by a person with the intent to sign the record.

228 "eRecording System" means the automated electronic recording system implemented by the clerk for
229 the recording of electronic documents among the land records maintained by the clerk.

230 "Filer" means an individual, corporation, business trust, estate, trust, partnership, limited liability
231 company, association, joint venture, public body, public corporation, government, or governmental
232 subdivision, agency, or instrumentality, or any other legal or commercial entity who files an electronic
233 document among the land records maintained by the clerk.

234 "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair
235 dealing.

236 "Landowner" means a person that, before foreclosure, has the right of redemption in the real
237 property described in a security instrument. The term does not include a person that holds only a lien
238 on the real property.

239 "Land records document" means any writing authorized by law to be recorded, whether made on
240 paper or in electronic format, which the clerk records affecting title to real property.

241 "Notification" means a document containing information required under this article and signed by
242 the person required to provide the information.

243 "Organization" means a person other than an individual.

244 "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability

company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Real property" means real property that is used for residential or nonresidential purposes.

"Recording data" means the date, and deed book and page number or instrument number, that indicate where a document is recorded in the land records of the clerk of the circuit court pursuant to Chapter 6 (§ 55-106 et seq.).

"Secured creditor" means a person who holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest in real property and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument. The term also includes "lender" as used in the Consumer Real Estate Settlement Protection Act (CRESPA) (§ 6.1-2.19 et seq.) and "lien creditor" and "servicer" as used in § 55-66.3.

"Secured obligation" means an obligation the payment or performance of which is secured by a security interest.

"Security instrument" means an agreement, however denominated, that creates or provides for a security interest, whether or not it also creates or provides for a lien on personal property.

"Security interest" means an interest in real property created by a security instrument, securing payment, or performance of an obligation and includes a mortgage or deed of trust.

"Sign" means, with present intent to authenticate, accept, or adopt a document:

1. To execute or adopt a tangible symbol; or
2. To attach to or logically associate with the document an electronic sound, symbol, or process.

"State" means a state of the United States, District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this article, to the office of the clerk of the circuit court pursuant to Chapter 6 (§ 55-106 et seq.).

§ 55-66.10. Notification; manner of giving and effective date.

A. A person gives a notification by:

1. Depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the recipient's address for giving a notification, with first-class postage or cost of delivery properly addressed to the recipient's address for giving a notification;

2. Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner; or

3. Causing it to be received at the address for giving a notification within the time that it would have been received if otherwise given pursuant to subdivision A 1.

B. A notification is effective:

1. The day after it is deposited with a commercially reasonable delivery service for overnight delivery;

2. Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

3. The day it is given, if given pursuant to subdivision A 2; or

4. The day it is received, if given by a method other than as provided in subdivision A 1 or A 2.

C. If this article or a notification given pursuant to this article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this State or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

§ 55-66.11. Document of rescission; effect; liability for wrongful recording.

A. In this section, "document of rescission" means a document stating that an identified satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security instrument was recorded erroneously or fraudulently, the secured obligation remains unsatisfied, and the security instrument remains in force.

B. If a person records a satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security instrument in error or by fraud, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction, certificate, or affidavit.

C. A recorded document of rescission has no effect on the rights of a person who:

1. Acquired an interest in the real property described in a security instrument after the recording of the satisfaction, certificate of satisfaction, or affidavit of satisfaction of the security instrument and before the recording of the document of rescission; and

2. Would otherwise have priority over or take free of the lien created by the security instrument under the laws of the Commonwealth of Virginia.

D. A person, other than the clerk of the circuit court or any of his employees or other governmental official in the course of the performance of his recordation duties, who erroneously, fraudulently, or wrongfully records a document of rescission is subject to liability under § 55-66.3.

§ 55-66.12. Secured creditor to submit satisfaction for recording; liability for failure.

A. A secured creditor shall submit for recording a satisfaction of a security instrument within 90 days after the creditor receives full payment or performance of the secured obligation in accordance with subsection A of § 55-66.3. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

B. A secured creditor who is required to submit a satisfaction of a security instrument for recording and fails to do so by the end of the period specified in subsection A is subject to liability under § 55-66.3.

§ 55-66.13. Form and effect of satisfaction.

A. A document is sufficient to constitute a satisfaction of a security instrument if it conforms substantially in form and content to the requirements of § 55-66.4:1 and it:

1. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;

2. States that the person signing the satisfaction is the secured creditor;

3. Contains a legal description of the real property identified in the security instrument, but only if a legal description is necessary for a satisfaction to be properly indexed, otherwise the deed book and page number or instrument number is sufficient;

4. Contains language terminating the effectiveness of the security instrument; and

5. Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

B. The clerk of the circuit court shall accept for recording a satisfaction document, unless:

1. An amount equal to or greater than the applicable recording fees and taxes is not tendered;

2. The document is submitted by a method or in a medium not authorized by the laws of the Commonwealth of Virginia; or

3. The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

§ 55-66.15. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent permitted by law, this article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this article modifies, limits, or supersedes §§ 7001(c) and 7004 of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

2. [That the Virginia Information Technologies Agency (VITA) may seek reimbursement for the development of the security standards pursuant to subsection D of § 17.1-279 and uniform standards for the electronic recording of land records documents in an amount not to exceed \$50,000 from the Compensation Board from funds collected pursuant to subsection B of § 17.1-279 of the Technology Trust Fund. If VITA is requested to make further revisions of the standards which govern the creation, access, maintenance, and filing of land records and documents electronically, VITA shall submit to the Compensation Board a project budget and obtain approval of the same, prior to commencement of work, to be billed in accordance with the required procedures for VITA to bill other agencies for its services. The Compensation Board shall pay the Virginia Information Technologies Agency from funds collected pursuant to subsection B of § 17.1-279 of the Technology Trust Fund for the development of security standards pursuant to subsection D of § 17.1-279 and uniform standards for the electronic recording of land record documents in an amount not to exceed \$50,000. If the Virginia Information Technologies Agency is requested to make further revisions of the standards that govern the creation, access, maintenance, and filing of land records and documents electronically, the Virginia Information Technologies Agency shall submit to the Compensation Board a project budget and obtain approval of the same, prior to commencement of the work, to be billed in accordance with the required procedures for the Virginia Information Technologies Agency to bill other agencies for its services.]