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HOUSE BILL NO. 3083

Offered January 17, 2007

A *BILL to amend the Code of Virginia by adding a section numbered 64.1-157.1, relating to the nonexoneration of liens against property bequeathed.*

Patron—Toscano

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 64.1-157.1 as follows:

§ 64.1-157.1. Nonexoneration; payment of lien if granted by agent.

A. Unless a specific intent is clearly set out in the will, a specific devise or bequest of real or personal property passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator, without the right of exoneration. A general directive in the will to pay debts shall not be evidence of a specific contrary intent that the mortgage, pledge, security interest or other lien be exonerated prior to passing to the legatee.

B. Subsection A shall not apply to any mortgage, pledge, security interest or other lien existing at the date of death of the testator against any specifically devised or bequeathed real or personal property that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated. For the purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iii) an incapacitated person is one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest or other lien granted by the agent on the specific property is thereafter ratified by the testator while he is not incapacitated, or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

C. Subsection A shall not apply to any mortgage, pledge, security interest or other lien existing at the date of the death of the testator against any specific devise or bequest of any real or personal property that was granted by a conservator, guardian or committee of the testator. This subsection shall not apply if, after the mortgage, pledge, security interest or other lien granted by the conservator, guardian or committee, there is an adjudication that the testator's disability has ceased and the testator survives that adjudication by at least one year.

INTRODUCED

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