

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 64.1-157.1, relating to the*  
3 *nonexoneration of liens against property bequeathed.*

4 [H 3083]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 64.1-157.1 as follows:**8 *§ 64.1-157.1. Nonexoneration; payment of lien if granted by agent.*

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

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

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

ENROLLED

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