

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 307

An Act to amend and reenact § 55-59.1 of the Code of Virginia, relating to notices required before sale by trustee to owners, lienors, etc.

[S 1546]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 55-59.1 of the Code of Virginia is amended and reenacted as follows:

§ 55-59.1. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

A. In addition to the advertisement required by § 55-59.2 the trustee or the party secured shall give written notice of the time, date and place of any proposed sale in execution of a deed of trust, which notice shall include either (i) the instrument number or deed book and page numbers of the instrument of appointment filed pursuant to § 55-59, or (ii) said notice shall include a copy of the executed and notarized appointment of substitute trustee by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the party secured, (ii) any subordinate lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of assignee are likewise recorded at least 30 days prior to the proposed sale, (iv) any condominium unit owners' association which has filed a lien pursuant to § 55-79.84, (v) any property owners' association which has filed a lien pursuant to § 55-516, and (vi) any proprietary lessees' association which has filed a lien pursuant to § 55-472. Written notice shall be given pursuant to clauses (iv), (v) and (vi), only if the lien is recorded at least 30 days prior to the proposed sale. Mailing of a copy of the advertisement or a notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders, the property owners' association or proprietary lessees' association, their assigns and the condominium unit owners' association, at the address noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice. The written notice of proposed sale when given as provided herein shall be deemed an effective exercise of any right of acceleration contained in such deed of trust or otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent failure to give notice as required by this subsection shall not impose liability on either the trustee or the secured party.

B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may nonetheless proceed to sale, provided the beneficiary has given written notice to the person required to pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee upon expiration of 14 days from the date of mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person required to pay the instrument as reflected in the records of the beneficiary and shall include the name and mailing address of the trustee. The notice shall further advise the person required to pay the instrument that if he believes he may be subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the circuit court of the county or city where the property or some part thereof lies for an order requiring the beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the sale on a finding that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee to sell or the validity of the sale.

C. *When the written notice of proposed sale is given as provided herein, there shall be a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust.* Failure to comply with the requirements of notice contained in this section shall not affect the validity of the sale, and a purchaser for value at such sale shall be under no duty to ascertain whether such notice was validly given.

D. In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice need be given pursuant to this section.