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SENATE BILL NO. 1291

Senate Amendments in [] — January 28, 2009

A BILL to amend and reenact § 8.01-241 of the Code of Virginia, relating to the period for enforcement of deeds of trust or mortgages.

Patron Prior to Engrossment—Senator Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-241 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-241. Limitation of enforcement of deeds of trust, mortgages and liens for unpaid purchase money.

A. No deed of trust or mortgage heretofore or hereafter given to secure the payment of money, and no lien heretofore or hereafter reserved to secure the payment of unpaid purchase money, shall be enforced after 10 years from the time when the original obligation last maturing thereby secured shall have become due and payable according to its terms and without regard to any provision for the acceleration of such date; provided that the period of one year from the death of any party in interest shall be excluded from the computation of time.

B. Notwithstanding the limitations prescribed by subsection A, a deed of trust or mortgage given, and a lien reserved to secure the payment of [~~unpaid purchase~~] money, for which the original obligation last maturing thereby secured became due and payable according to its terms between July 1, 1988, and July 1, 2000, without regard to any provision for the acceleration of the date such obligation became due and payable, shall not be enforced after July [1,] 2010. [However, the provisions of this subsection shall have no effect on the rights of a person who (i) acquired an interest in the real property securing such deed of trust or mortgage between July 1, 2008, and the date of enactment of this subsection and (ii) would otherwise have priority over or take free of such deed of trust or mortgage under the laws of the Commonwealth at that time.]

C. The limitations prescribed by this section may be extended by the recordation of a certificate in the form provided in § 8.01-241.1 prior to the expiration of the limitation period prescribed herein in the clerk's office in which such lien is recorded and executed either by the party in whom the beneficial title to the property so encumbered is vested at the time of such recordation or by his duly authorized attorney-in-fact, or agent. Recordation of the certificate shall extend the limitations of the right to enforce the lien for 10 years from the date of the recordation of the certificate. The clerk of the court shall index the certificate in both names in the index of the deed book and give reference to the book and page in which the original writing is recorded. Unless the deed or deeds executed pursuant to the foreclosure of any mortgage or to the execution of or sale under any deed of trust is recorded in the county or city where the land is situated within one year after the time the right to enforce the mortgage or deed of trust shall have expired as hereinabove provided, such deed or deeds shall be void as to all purchasers for valuable consideration without notice and lien creditors who make any purchase of or acquire any lien on the land conveyed by any such deed prior to the time such deed is so recorded.

2. That an emergency exists and this act is effective retroactively to July 1, 2008.

ENGROSSED

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