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SENATE BILL NO. 959

Offered January 14, 2009

Prefiled January 12, 2009

A BILL to amend and reenact § 55-82 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-82.1, relating to fraudulent conveyances; attorney fees.

Patrons—Obenshain; Delegate: Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-82 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-82.1 as follows:

§ 55-82. Creditor's suits to avoid such gifts, etc.

A creditor before obtaining a judgment or decree for his claim may, whether such claim be due and payable or not, institute any suit which he might institute after obtaining such judgment or decree to avoid a gift, conveyance, assignment or transfer of, or charge upon, the estate of his debtor declared void by either § 55-80 or § 55-81; and he may in such suit have all the relief in respect to such estate to which he would be entitled after obtaining a judgment or decree for the claim which he may be entitled to recover. A creditor availing himself of this section shall have a lien from the time of bringing his suit on all the estate, real and personal, hereinbefore mentioned, and a petitioning creditor shall be entitled to a like lien from the time of filing his petition in the court or in the clerk's office of the court in which the suit is brought. If the proceeds of sale be insufficient to satisfy the claims of all the creditors whose liens were acquired at the same time they shall be applied ratably to such claims and the court may make a personal decree against the debtor for any deficiency remaining on the claim of any creditor after applying thereto his share of the proceeds of sale, or, if any creditor be not entitled to share in such proceeds, may render a personal decree against the debtor for the full amount of the creditor's claim. ~~And in any such case if the gift, deed, assignment, transfer or charge be declared void, the court shall allow counsel for the creditors a reasonable attorney's fee to be paid out of the proceeds of sale as other costs are paid provided the attorney's fee allowed does not affect a prior lien creditor not represented by such attorney.~~ This section is subject to the provisions of §§ 8.01-268 and 8.01-269.

§ 55-82.1. Creditor's suits; attorney fees.

In any suit brought by a creditor pursuant to § 55-80, 55-81, or 55-82 where a (i) gift; (ii) deed; (iii) conveyance, assignment, or transfer of or charge upon the estate of a debtor; (iv) suit commenced or decree, judgment, or execution suffered or obtained; or (v) bond or other writing is declared void, the court shall award counsel for the creditor reasonable attorney fees against the debtor. Should there be a resulting judicial sale, any award of attorney fees shall be paid out of the proceeds of the sale, as other costs are paid, provided the award of attorney fees does not affect a prior lien creditor not represented by the attorney.

INTRODUCED

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