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HOUSE BILL NO. 1152

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 55-59.1, 55-59.3, and 55-59.4 of the Code of Virginia, relating to foreclosure of affordable dwelling units.

Patron—Scott, J.M.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-59.1, 55-59.3, and 55-59.4 of the Code of Virginia are 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, and (vii) *where the property is an affordable dwelling unit in an affordable dwelling unit program of a locality established by zoning ordinance pursuant to § 15.2-2304 or 15.2-2305, and where the property is subject to covenants recorded in the circuit court land records prior to the deed of trust proposed for sale in execution, which ordinance and covenants include maximum sales price limitations, to the redevelopment and housing authority administering the applicable affordable dwelling unit program, or to the governing body of the locality, where no such redevelopment and housing authority exists.* 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 *and, where the property is an affordable dwelling unit as described herein, to the applicable redevelopment and housing authority, or to the governing body of the locality where no such redevelopment and housing authority exists, at the address of the main office of the applicable redevelopment and housing authority or the local governing body,* 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

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59 instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to
60 sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee
61 to sell or the validity of the sale.

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

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

69 § 55-59.3. Contents of advertisements of sale.

70 The advertisement of sale under any deed of trust, in addition to such other matters as may be
71 required by such deed of trust or by the trustee, in his discretion, shall set forth a description of the
72 property to be sold, which description need not be as extensive as that contained in the deed of trust,
73 and shall identify the property by street address, if any, or, if none, shall give the general location of the
74 property with reference to streets, routes, or known landmarks. *Where the property to be sold is an*
75 *affordable dwelling unit in an affordable dwelling unit program of a locality established by zoning*
76 *ordinance pursuant to § 15.2-2304 or 15.2-2305, and where the property is subject to covenants*
77 *recorded in the circuit court land records prior to the deed of trust, which ordinance and covenants*
78 *include maximum sales price limitations, the description of the property shall include a statement that it*
79 *is an affordable dwelling unit subject to applicable zoning ordinance provisions and shall also include*
80 *the deed book and page numbers of the recorded covenants that limit maximum sales price.* Where
81 available, tax map identification may be used but is not required. The advertisement shall also include
82 the time, place and terms of sale and shall give the name or names of the trustee or trustees. It shall set
83 forth the name, address and telephone number of such person (either a trustee or the party secured or his
84 agent or attorney) as may be able to respond to inquiries concerning the sale.

85 § 55-59.4. Powers and duties of trustee in event of sale under or satisfaction of deed of trust.

86 A. In the event of sale under a deed of trust, the trustee shall have the following powers and duties
87 in addition to all others:

88 1. ~~Written~~ *a. Subject to the rights set forth in subdivision b, written one-price bids may be made and*
89 *shall be received by the trustee from the beneficiary or any other person for entry by announcement of*
90 *the trustee at the sale. Any Subject to the rights set forth in subdivision b, any person other than the*
91 *trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid.*
92 *Upon request to the trustee or trustees, any other bidder in attendance at a foreclosure sale shall be*
93 *permitted to inspect written bids. Whenever Except as otherwise provided for in subdivision b, whenever*
94 *the written bid of the beneficiary is the highest bid submitted at the sale, such document shall be filed*
95 *by the trustee with his account of sale required under § 26-15. The written bid submitted pursuant to*
96 *this subsection may be prepared by the beneficiary, its agent or attorney.*

97 *b. Where the property is an affordable dwelling unit in an affordable dwelling unit program of a*
98 *locality established by zoning ordinance pursuant to § 15.2-2304 or 15.2-2305, and where the property*
99 *is subject to covenants recorded in the circuit court land records prior to the deed of trust proposed for*
100 *sale in execution, which ordinance and covenants include maximum sales price limitations, the*
101 *redevelopment and housing authority administering the affordable dwelling unit program, or where no*
102 *such redevelopment and housing authority exists, the governing body of the locality, shall have an*
103 *exclusive right to purchase the property at the foreclosure sale for an amount equal to the*
104 *then-maximum controlled sales price applicable to the affordable dwelling unit, as determined pursuant*
105 *to the affordable dwelling unit program of the locality. Every trustee sale under a deed of trust for such*
106 *an affordable dwelling unit shall give the redevelopment and housing authority of the locality*
107 *administering the applicable affordable dwelling unit program, or where no such redevelopment and*
108 *housing authority exists, the governing body of the locality, the opportunity and the exclusive right to*
109 *purchase the property at the foreclosure sale for such amount.*

110 2. The trustee may require of any bidder at any sale a cash deposit of as much as ~~ten per centum~~ 10
111 percent of the sale price (unless the deed of trust specifies a higher or lower maximum, which may be
112 done by the words "bidder's deposit of not more than ...dollars may be required," or words of like
113 purport), before his bid is received, which shall be refunded to the bidder unless the property is sold to
114 him, otherwise to be applied to his credit in settlement or, should he fail to complete his purchase
115 promptly, to be applied to pay the costs and expense of sale and the balance, if any, to be retained by
116 the trustee as his compensation in connection with the sale. *A cash deposit shall not be required of a*
117 *redevelopment and housing authority or a governing body of a locality exercising its exclusive right to*
118 *purchase an affordable dwelling unit pursuant to the provisions of this section.*

119 3. The trustee shall receive and receipt for the proceeds of sale, no purchaser being required to see to
120 the application of the proceeds, account for the same to the commissioner of accounts pursuant to

121 § 26-15 and apply the same, first, to discharge the expenses of executing the trust, including a
122 reasonable commission to the trustee; secondly, to discharge all taxes, levies, and assessments, with
123 costs and interest if they have priority over the lien of the deed of trust, including the due pro rata
124 thereof for the current year; thirdly, to discharge in the order of their priority, if any, the remaining
125 debts and obligations secured by the deed, and any liens of record inferior to the deed of trust under
126 which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be paid to the
127 grantor or his assigns; provided, however, that the trustee as to such residue shall not be bound by any
128 inheritance, devise, conveyance, assignment or lien of or upon the grantor's equity, without actual notice
129 thereof prior to distribution; provided further that such order of priorities shall not be changed or varied
130 by the deed of trust. The trustee's deed shall show the trustee's mailing address.

131 B. Upon discharge (other than by sale by the trustee) of all debts, duties and obligations imposed by
132 the deed upon the grantor, including any expenses incurred preparatory to sale, then upon the grantor's
133 request the trustee shall execute and deliver a good and sufficient deed of release at the grantor's own
134 proper costs and charges.