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HOUSE BILL NO. 714

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 55-59.4 and 58.1-3340 of the Code of Virginia, relating to foreclosure sales; trustee to pay taxes.

Patron—Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-59.4 and 58.1-3340 of the Code of Virginia are amended and reenacted as follows:**

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

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

1. Written one-price bids may be made and shall be received by the trustee from the beneficiary or any other person for entry by announcement of the trustee at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee or trustees, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Whenever the written bid of the beneficiary is the highest bid submitted at the sale, such document shall be filed by the trustee with his account of sale required under § 26-15. The written bid submitted pursuant to this subsection may be prepared by the beneficiary, its agent or attorney.

2. The trustee may require of any bidder at any sale a cash deposit of as much as ten per centum of the sale price (unless the deed of trust specifies a higher or lower maximum, which may be done by the words "bidder's deposit of not more than ... dollars may be required," or words of like purport), before his bid is received, which shall be refunded to the bidder unless the property is sold to him, otherwise to be applied to his credit in settlement or, should he fail to complete his purchase promptly, to be applied to pay the costs and expense of sale and the balance, if any, to be retained by the trustee as his compensation in connection with that sale.

3. The trustee shall receive and receipt for the proceeds of sale, ~~no purchaser being required to see to the application of the proceeds,~~ account for the same to the commissioner of accounts pursuant to § 26-15 and apply the same, first, to discharge the expenses of executing the trust, including a reasonable commission to the trustee; secondly, to discharge all taxes, levies, and assessments, with costs and interest if they have priority over the lien of the deed of trust, including the due pro rata thereof for the current year; thirdly, to discharge in the order of their priority, if any, the remaining debts and obligations secured by the deed, and any liens of record inferior to the deed of trust under which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be paid to the grantor or his assigns; provided, however, that the trustee as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the grantor's equity, without actual notice thereof prior to distribution; provided further that such order of priorities shall not be changed or varied by the deed of trust. The trustee's deed shall show the trustee's mailing address.

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

§ 58.1-3340. Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser or trustee at sale; lien on rents.

There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance. The lien shall continue to be such prior lien until actual payment shall have been made to the proper officer of the taxing authority. The purchaser at a sale, *or trustee in the event of a foreclosure sale*, shall cause the proceeds to be applied to the payment of all taxes and levies assessed on real estate, ~~the provisions of § 55-59.4 notwithstanding~~. In the case of the purchase of a portion of a tract of land, the purchaser shall cause the proceeds to be applied to the payment of taxes and levies assessed on the entire tract, prorated in accordance with the relationship that the purchase price bears to the most recent assessed value of the entire tract. If the cost per acre of the purchased parcel is less than the assessed value per acre of the entire tract, or if, in the reasonable opinion of the local commissioner of the revenue or other assessing officer, the purchase price is less than the fair market value of the purchased parcel, the local commissioner of the revenue or other assessing officer

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59 may require that an appraisal, prepared by a state-certified or state-licensed appraiser, of the purchased
60 parcel be provided, and in such event the proration shall be made in accordance with the relationship
61 that the greater of (i) the appraised value of the purchased parcel or (ii) the purchase price bears to the
62 most recent assessed value of the entire tract. In the event a proration is necessary, the purchaser's
63 portion of such tract of land shall be relieved of such lien to the extent the proceeds exceed the
64 purchaser's pro rata share of taxes. It shall be the responsibility of the treasurer or other proper officer of
65 the taxing authority to cause the release of the lien. The seller's liability for taxes and levies shall be
66 effectively prorated contractually. The words "taxes" and "levies" as used in this section include the
67 penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby
68 shall, in addition to existing remedies for the collection of taxes and levies, be enforceable by suit in
69 equity under the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.
70 There shall be a further lien upon the rents of such real estate whether the same be in money or in
71 kind, for taxes of the current year.