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HOUSE BILL NO. 715

House Amendments in [] - February 1, 2010

A BILL to amend and reenact § 55-66.3 of the Code of Virginia, relating to releasing deeds of trust and other liens.

Patron Prior to Engrossment—Delegate Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 55-66.3 of the Code of Virginia is amended and reenacted as follows:**

§ 55-66.3. Release of deed of trust or other lien.

A. 1. Except as provided in Article 2.1 of this chapter, after full or partial payment or satisfaction has been made of a debt secured by a ~~mortgage~~, deed of trust, vendor's lien, or other lien, or any one or more obligations representing at least 25 percent of the total amount secured by such lien, but less than the total number of the obligations so secured, or the debt secured is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed of trust prepared pursuant to § 55-58.2 only when the obligor or the settlement agent has paid the debt in full and requested that the instrument be released.

If the lien creditor receives notice from a settlement agent at the address identified in its payoff statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the certificate, within 90 days after receipt of such notice, to the settlement agent at the address specified in the notice received from the settlement agent.

If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by hand delivery or by courier hand delivery.

If the lien creditor has already delivered the certificate to the clerk's office by the time it receives notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff statement.

If the lien creditor has not, within 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or attorney may take an assignment of the right to the \$500 penalty or facilitate such an assignment to any third party designated by the settlement agent or attorney. Following the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement, the lien creditor shall pay any court costs and reasonable attorney's fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond or other evidence of debt secured by such ~~mortgage~~, deed of trust, vendor's lien or other lien referred to in subdivision 1 or any interest therein, has been assigned or transferred to a party other than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien creditor for failure to comply with this subsection, as set forth in subdivision 1.

B. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney-in-fact, or any person to whom the instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with the certificate of satisfaction, by the creditor, or his duly authorized agent, attorney or attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when the debt was satisfied, entitled and authorized to receive the same.

C. And when so signed and the affidavit hereinbefore required has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance be by deed of trust or ~~mortgage~~, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

D. As used in this section:

"CRESPA" means the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq.).

ENGROSSED

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59 *"Deed of trust" means any mortgage, deed of trust or vendor's lien.*

60 "Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee or
61 obligee of a note, bond or other evidence of debt and shall embrace the lien creditor or his successor in
62 interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond or
63 other evidence of debt.

64 ~~"Mortgage" means any mortgage, deed of trust or vendor's lien.~~

65 ~~"Obligor's designee" shall include an attorney or other settlement agent closing a transaction which~~
66 ~~results in the obligor's loan being paid off.~~

67 "Payoff letter" means a written communication from the lien creditor or servicer stating, at a
68 minimum, the amount outstanding and required to be paid to satisfy the obligation.

69 "Satisfactory evidence of the payment of the obligation secured by the ~~mortgage deed of trust~~" means
70 (i) any one of (a) the original canceled check or a copy of the canceled check, showing all
71 endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in written or
72 electronic form of a wire transfer to the bank account of the lien creditor or servicer, as applicable, or
73 (c) a bank statement in written or electronic form reflecting completion of the wire transfer or
74 negotiation of the check, as applicable; and (ii) a payoff letter or other reasonable documentary evidence
75 that the payment was to effect satisfaction of the obligation secured or evidenced by the ~~mortgage deed~~
76 ~~of trust.~~

77 *"Satisfied by payment" includes obtaining written confirmation from the lien creditor that the*
78 *underlying obligation has a zero balance.*

79 "Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

80 "Settlement agent" has the same meaning ascribed thereto in § 6.1-2.20, provided that a person shall
81 not be a settlement agent unless he is registered pursuant to § 6.1-2.26 and otherwise fully in
82 compliance with the applicable provisions of Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

83 *"Title insurance company" has the same meaning ascribed thereto in § 38.2-4601, provided that the*
84 *title insurance company seeking to release a lien by the process described in subsection E issued a*
85 *policy of title insurance, through a title insurance agency or agent as defined in § 38.2-4601.1, for a*
86 *real estate transaction wherein the loan secured by the lien was satisfied by payment made by the [title*
87 *insurance agency or agent also acting as the] settlement agent.*

88 E. Release of lien by settlement agent or title insurance company.

89 A settlement agent or title insurance company may release a ~~mortgage deed of trust~~ in accordance
90 with the provisions of this subsection (i) if the obligation secured by the ~~mortgage deed of trust~~ has
91 been satisfied by payment made by the settlement agent and (ii) whether or not the settlement agent or
92 title insurance company is named as a trustee under the deed of trust or otherwise has received the
93 authority to release the lien.

94 1. Notice to lienholder.

95 a. After or accompanying payment in full of the obligation secured by a ~~mortgage deed of trust~~, a
96 settlement agent or title insurance company intending to release a ~~mortgage deed of trust~~ pursuant to
97 this subsection shall deliver to the lien creditor by certified mail or guaranteed overnight delivery service
98 a notice of intent to release the ~~mortgage deed of trust~~ with a copy of the payoff letter and a copy of
99 the release to be recorded as provided in this subsection.

100 b. The notice of intent to release shall contain (i) the name of the lien creditor and, the name of the
101 servicer if loan payments on the ~~mortgage deed of trust~~ are collected by a servicer, or both names, (ii)
102 the name of the settlement agent, (iii) the name of the title insurance company if the title insurance
103 company intends to release the lien, and (iv) the date of the notice. The notice of intent to release shall
104 conform substantially to the following form:

105 NOTICE OF INTENT TO RELEASE

106 Notice is hereby given to you concerning the ~~(mortgage) deed of trust~~ described on the ~~(release of~~
107 ~~mortgage) certificate of satisfaction~~, a copy of which is attached to this notice, as follows:

108 1. The undersigned settlement agent identified below has paid the obligation secured by the
109 ~~(mortgage) deed of trust~~ described above herein or obtained written confirmation from you that such
110 obligation has a zero balance.

111 2. The undersigned will release the ~~(mortgage) deed of trust~~ described in this notice unless, within 90
112 days from the date this notice is mailed by certified mail or guaranteed overnight delivery service, the
113 undersigned has received by certified mail or guaranteed overnight delivery service a notice stating that
114 a release of the ~~(mortgage) deed of trust~~ has been recorded in the clerk's office or that the obligation
115 secured by the ~~(mortgage) deed of trust~~ described above herein has not been paid, or the lien creditor or
116 servicer otherwise objects to the release of the ~~mortgage deed of trust~~. Notice shall be sent to the
117 address stated on this form.

118 (Name of settlement agent)

119 (Signature of settlement agent or title insurance company)

120 (Address of settlement agent or title insurance company)

(Telephone number of settlement agent *or title insurance company*)
 (Current Virginia CRESPA registration number of settlement agent *at the time the obligation was paid or confirmed to have a zero balance*)

2 3. Certificate of satisfaction and affidavit of settlement agent *or title insurance company*.

a. If, within 90 days following the day on which the settlement agent *or title insurance company* mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send by certified mail or guaranteed overnight delivery service to the settlement agent *or title insurance company* a notice stating that a release of the ~~mortgage deed of trust~~ has been recorded in the clerk's office or that the obligation secured by the ~~mortgage deed of trust~~ has not been paid in full or that the lien creditor or servicer otherwise objects to the release of the ~~mortgage deed of trust~~, the settlement agent *or title insurance company* may execute, acknowledge and file with the clerk of court of the jurisdiction wherein the ~~mortgage deed of trust~~ is recorded a certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b of this subsection and (ii) a copy of the notice of intent to release that was sent to the lender, *the servicer, or both*. The certificate of satisfaction shall include the settlement agent's ~~currently active~~ CRESPA registration number, issued by the Virginia State Bar ~~and or the Virginia State Corporation Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of trust or obtained written confirmation from the lien creditor that such obligation has a zero balance. The certificate of satisfaction shall note that the individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the CRESPA registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the mortgage deed of trust described therein as provided in this subsection.~~

b. The certificate of satisfaction used by the settlement agent *or title insurance company* shall include an affidavit certifying (i) that the settlement agent has satisfied; ~~and possesses satisfactory evidence of payment of the obligation secured by the mortgage deed of trust described in the certificate; (ii) that the settlement agent or title insurance company possesses satisfactory evidence of payment of the obligation secured by the deed of trust described in the certificate or written confirmation from the lien creditor that such obligation has a zero balance; (iii) that the lien of the mortgage deed of trust may be released; (iii iv) that the person executing the certificate is the settlement agent, the title insurance company, or is duly authorized to act on behalf of the settlement agent or title insurance company; and (iv v) that the notice of intent to release was delivered to the lien creditor or servicer and the settlement agent or title insurance company received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in the following form:~~

AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

The undersigned hereby certifies that, in accordance with the provisions § 55-66.3 of the Code of Virginia of 1950, as amended and in force on the date hereof (the Code) (a) the undersigned is a settlement agent *or title insurance company* as defined in subsection D of § 55-66.3 of the Code or a duly authorized officer, director, member, partner or employee of such settlement agent *or title insurance company*; (b) the settlement agent has satisfied the obligation secured by the ~~mortgage and deed of trust~~; (c) ~~the settlement agent or title insurance company possesses satisfactory evidence of the payment of the obligation secured by the mortgage deed of trust described in the certificate recorded herewith or written confirmation from the lien creditor that such obligation has a zero balance; (e d)~~ the settlement agent *or title insurance company* delivered to the lien creditor or servicer in the manner specified in subdivision E 1 of § 55-66.3 of the Code the notice of intent to release and possesses evidence of receipt of such notice by the lien creditor or servicer; and ~~(d e)~~ the lien of the ~~mortgage deed of trust~~ is hereby released.

(Authorized signer)

3 4. Effect of filing.

When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and notarized as provided in this subsection, and accompanied by (i) the affidavit described in subdivision 2 b of this subsection, and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor or servicer shall operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust ~~or mortgage~~, as a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

4 5. Effect of wrongful or erroneous certificate; damages.

a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a settlement agent *or title insurance agent* does not relieve the party obligated to repay the debt, or

182 anyone succeeding to or assuming the responsibility of the obligated party as to the debt, from any
183 liability for the debt or other obligations secured by the ~~mortgage deed of trust~~ that is the subject of the
184 wrongful or erroneous certificate of satisfaction.

185 b. A settlement agent *or title insurance agent* that wrongfully or erroneously executes and files or
186 records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the
187 recording of a wrongful or erroneous certificate of satisfaction.

188 c. The procedure authorized by this subsection for the release of a ~~mortgage deed of trust~~ shall
189 constitute an optional method of accomplishing a release of a ~~mortgage deed of trust~~ secured by
190 property in ~~this~~ the Commonwealth. The nonuse of the procedure authorized by this subsection for the
191 release of a ~~mortgage deed of trust~~ shall not give rise to any liability or any cause of action whatsoever
192 against a settlement agent or any title ~~insurer~~ *insurance company* by any obligated party or anyone
193 succeeding to or assuming the interest of the obligated party.

194 § 6. Applicability.

195 a. The procedure authorized by this subsection for the release of a ~~mortgage deed of trust~~ may be
196 used to effect the release of a ~~mortgage deed of trust~~ after July 1, 2002, regardless of when the
197 ~~mortgage deed of trust~~ was created, assigned or satisfied by payment made by the settlement agent.

198 b. This subsection applies only to transactions involving the purchase of or lending on the security of
199 real estate located in the Commonwealth *that is either (i) unimproved real estate with a lien to be*
200 *released of \$1 million or less or (ii) real estate containing at least one but not more than four*
201 *residential dwelling units.*

202 c. The procedure authorized by this subsection applies only to the full and complete release of a
203 ~~mortgage deed of trust~~. Nothing in this subsection shall be construed to authorize the partial release of
204 property from a ~~mortgage deed of trust~~ or otherwise permit the execution or recordation of a certificate
205 of partial satisfaction.

206 d. No settlement agent utilizing the process provided in this subsection for release of a mortgage may
207 take an assignment from a lien obligor or his designee of the right to collect the \$500 penalty
208 established in subsection A of this section or facilitate such an assignment to a third party designated by
209 such settlement agent.