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HOUSE BILL NO. 2133

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact § 55-17.1 of the Code of Virginia, relating to land trusts; successor trustees.

Patron—Barlow

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 55-17.1 of the Code of Virginia is amended and reenacted as follows:**

§ 55-17.1. Trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

No trust relating to real estate shall fail nor shall any use relating to real estate be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber or otherwise dispose of property therein described shall be effective and no person dealing with such a trustee shall be required to make further inquiry as to the right of such trustee to act nor shall he be required to inquire as to the disposition of any proceeds.

In any case under this section, where there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the city or county where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

In any case under this section where there is a recorded deed of conveyance to a trustee and the trustee named in the deed declines to serve, resigns, is disqualified or removed, or is adjudicated incapacitated and there is no successor trustee named in the deed, the beneficiaries of the trust, by majority decision, shall name a successor trustee. However, if the identities of the beneficiaries of the trust cannot be identified from the recorded deed of conveyance or a majority of the beneficiaries are unable to agree upon a successor trustee, the circuit court of the county or city in which the deed was recorded, upon the motion of any party interested in the administration of the trust, shall appoint a successor trustee whenever the court considers the appointment necessary for the administration of the trust. The name and address of any successor trustee so named or appointed shall be recorded with the clerk of the circuit court of the county or city in which the deed was recorded and such successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee unless the deed of conveyance expressly provides to the contrary.

Nothing in this section shall be construed to ~~(i)~~ (a) affect any right which a creditor may otherwise have against a trustee or beneficiary except as provided above, ~~(ii)~~ (b) enlarge upon the power of a corporation to act as trustee under § 6.1-5 or ~~(iii)~~ (c) affect the rule against perpetuities.

INTRODUCED

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