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**SENATE BILL NO. 798**

Offered January 12, 2011

Prefiled December 30, 2010

A *BILL to amend and reenact § 55-61 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-58.4, relating to judicial foreclosures.*

Patron—McEachin

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55-61 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-58.4 as follows:**

*§ 55-58.4. Exemptions from article.*

*The provisions of this article relating to the sale of property secured by a deed of trust where such deed of trust authorizes the trustee, or a substitute trustee, to make sale of such property shall not be applicable to deeds of trust entered into on or after July 1, 2011.*

*§ 55-61. Judicial foreclosure; sales under deeds of trust which contain no maturity date or provision authorizing sale.*

*When A. For deeds of trust entered into before July 1, 2011, when any property, real or personal, is conveyed by deed of trust, whether heretofore or hereafter made, to a trustee, to secure the payment of a debt, money, notes, bonds, stocks or other evidences of debt and there is no date fixed for the maturity thereof and such deed of trust contains no provision authorizing the trustee to make sale of such property, or any part thereof, and the reinvestment of the proceeds of sale in other property subject to the terms of such deed of trust, the circuit and corporation courts, or such court having jurisdiction of the subject matter, upon a bill filed by any one or more of the lien debtors, in which bill all persons interested in such lien and all holders of the evidences of debt secured by the deed of trust thereon, and all other necessary or proper parties, except the plaintiffs, shall be made defendants, may decree a sale of such property, or any part thereof, and may invest the proceeds of sale under decree of court subject to the terms of the deed of trust; provided, that the bill of complaint shall set forth facts which will justify the sale of the property, to be verified by the affidavit of at least one of the plaintiffs; provided, further, that no decree shall be made authorizing such sale unless it shall be shown to the satisfaction of the court that the interests of the lien debtor or debtors will be promoted and the interests of no person or persons holding the evidences of debt secured by the deed of trust will be violated thereby; provided, further, that the plaintiff or the party for whose benefit the suit is brought shall bear the cost.*

*B. A sale of property in execution of a deed of trust entered into on or after July 1, 2011, may only be held after the court conducts a foreclosure proceeding and enters a decree ordering such sale. Such foreclosure proceeding shall be conducted in accordance with the procedures set forth in subsection A.*

INTRODUCED

SB798