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SENATE BILL NO. 836

Offered January 12, 2011

Prefiled January 7, 2011

A *BILL to amend and reenact §§ 26-15 and 55-59.1 of the Code of Virginia, relating to notice of foreclosure.*

Patrons—Petersen and McEachin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-15 and 55-59.1 of the Code of Virginia are amended and reenacted as follows:

§ 26-15. Accounts of sales under deeds of trust, etc.

Within six months after the date of a sale made under any recorded deed of trust, mortgage or assignment for benefit of creditors, otherwise than under a decree, the trustee shall return an account of sale to the commissioner of accounts of the court wherein the instrument was first recorded. Promptly after recording any trustee's deed, the trustee shall deliver to the commissioner of accounts a copy of the deed. The date of sale is the date specified in the notice of sale, or any postponement thereof, as required by subsection A *B* of § 55-59.1. The commissioner shall state, settle and report to the court an account of the transactions of such trustee, and it shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court.

If the commissioner of accounts of the court wherein an instrument was first recorded becomes aware that an account as required by this section has not been filed, the commissioner and the court shall proceed against the trustee in like manner and impose like penalties as set forth in § 26-13, unless such trustee is excused for sufficient reason. If after a deed of trust is given on land lying in a county, and before sale thereunder, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city.

Whenever the commissioner reports to the court that a fiduciary, who is an attorney-at-law licensed to practice in the Commonwealth, has failed to make the required return within 30 days after the date of service of a summons, the commissioner shall also mail a copy of his report to the Virginia State Bar.

§ 55-59.1. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

A. *At least 30 days before the proposed sale in execution of a deed of trust, the party secured shall send by certified or registered mail a written notice of intent to foreclose to the present owner of the property at his last known address as such owner and address appear in the records of the party secured. The notice shall contain the name and contact information, including telephone number, for (i) the party secured, (ii) the mortgage servicer, if any, and (iii) an agent of the party secured who is authorized to modify the terms of the loan secured by the deed of trust.*

B. 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 § 55-516, and (v) any proprietary lessees' association which has filed a lien pursuant to § 55-472. 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 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~~

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SB836

59 to give notice as required by this subsection shall not impose liability on either the trustee or the
60 secured party.

61 BC. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason
62 cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may
63 nonetheless proceed to sale, provided the beneficiary has given written notice to the person required to
64 pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee
65 upon expiration of 14 days from the date of mailing of the notice. The notice shall be sent by certified
66 mail, return receipt requested, to the last known address of the person required to pay the instrument as
67 reflected in the records of the beneficiary and shall include the name and mailing address of the trustee.
68 The notice shall further advise the person required to pay the instrument that if he believes he may be
69 subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the
70 circuit court of the county or city where the property or some part thereof lies for an order requiring the
71 beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court,
72 the court may condition the sale on a finding that the person required to pay the instrument is
73 adequately protected against loss that might occur by reason of a claim by another person to enforce the
74 instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to
75 sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee
76 to sell or the validity of the sale.

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

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

84 F. *The failure to comply with the notice requirements of this section shall give a private cause of*
85 *action to the owner of the property that shall provide for appropriate equitable relief and the recovery*
86 *of such compensatory damages incurred as a result of the violation, as well as reasonable attorney fees*
87 *and costs.*