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HOUSE BILL NO. 648

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 8.01-432, 8.01-435, 8.01-436, 8.01-438, and 8.01-439 of the Code of Virginia, relating to confessions of judgment by a substitute attorney-in-fact.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-432, 8.01-435, 8.01-436, 8.01-438, and 8.01-439 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-432. Confession of judgment irrespective of suit pending.

Any person being indebted to another person, or any attorney-in-fact or substitute attorney-in-fact pursuant to a power of attorney, may at any time confess judgment in the clerk's office of any circuit court in this Commonwealth, whether a suit, motion or action be pending therefor or not, for only such principal and interest as his creditor may be willing to accept a judgment for, which judgment, when so confessed, shall be forthwith entered of record by the clerk in whose office it is confessed, in the proper order book of his court. Such judgment shall be as final and as binding as though confessed in open court or rendered by the court, subject to the control of the court in the clerk's office of which the same shall have been confessed.

§ 8.01-435. Who may confess judgment.

Confession of judgment under the provisions of § 8.01-432 may be made either by (i) the debtor himself or by (ii) either his duly constituted attorney-in-fact or any substitute attorney-in-fact, acting under and by virtue of a power of attorney, provided that the power of attorney and, if necessary, the designation of a substitute attorney-in-fact are duly executed and acknowledged by him as deeds are required to be acknowledged, before any officer or person authorized to take acknowledgments of writings to be recorded in this Commonwealth, provided, however, that any. Any power of attorney incorporated in, and made part of, any note or bond authorizing the confession of judgment thereon against the makers and endorsers in the event of default in the payment thereof at maturity need not be acknowledged, but shall specifically name therein the attorney or attorneys or other person or persons authorized to confess such judgment and the clerk's office in which the judgment is to be confessed.

§ 8.01-436. Form of confession of judgment.

On the presentation of any such power of attorney or designation as is mentioned in § 8.01-435 by any of the persons therein named as attorney-in-fact or substitute attorney-in-fact, or on the personal appearance of the debtor and the expression by him of his desire to confess such judgment, the clerk of the court mentioned in such power of attorney, or before whom such debtor shall so appear, shall draw and require the attorney-in-fact or substitute attorney-in-fact so appearing, or the debtor, as the case may be, to sign a confession of judgment, which shall be in form substantially as follows:

"Virginia: In the clerk's office of the court of the of, I, (or we) A.B., (or A.B. and C.D., etc.) hereby acknowledged myself (or ourselves) to be justly indebted to, and do hereby confess judgment in favor of (name of creditor) in the sum of dollars (\$.....) with interest thereon from the day of, two thousand, until paid, and the cost of this proceeding (including the attorney's fees and collection fees provided for in the instrument on which the proceeding is based) hereby waiving the benefit of my (or our) homestead exemptions as to the same, provided the instrument on which the proceeding is based carries such homestead waiver.

Given under my (or our) hand, this day of, two thousand and

(Signatures)

or, if by an attorney-in-fact, signatures and seals of debtors,

By

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57 his (or their) attorney-in-fact."

58 § 8.01-438. When judgment confessed by attorney-in-fact copy to be served on judgment debtor.

59 If a judgment is confessed by an attorney-in-fact *or substitute attorney-in-fact*, it shall be the duty of
60 the clerk within ~~ten~~ 10 days from the entry thereof to cause to be served upon the judgment debtor a
61 certified copy of the order so entered in the common-law order book, to which order shall be appended
62 a notice setting forth the provisions of § 8.01-433. The officer who serves the order shall make return
63 thereof within ~~ten~~ 10 days after service to the clerk. The clerk shall promptly file the order with the
64 papers in the case. The failure to serve a copy of the order within ~~sixty~~ 60 days from the date of entry
65 thereof shall render the judgment void as to any debtor not so served.

66 Service of a copy of the order on a nonresident judgment debtor by an officer of the county or city
67 of his residence, authorized by law to serve processes therein, or by the clerk of the court sending a
68 copy of the order by registered or certified mail to such nonresident judgment debtor at his last known
69 ~~post-office~~ *post office* address and the filing of a certificate with the papers in the case showing that
70 such has been done or of a receipt showing the receipt of such letter by such nonresident judgment
71 debtor, shall be deemed sufficient service thereof for the purposes of this section.

72 § 8.01-439. Filing of records by clerk.

73 Such confession and clerk's certificate, together with the power of attorney *and, if necessary, the*
74 *designation of a substitute attorney-in-fact* if the confession be by an attorney-in-fact *or a substitute*
75 *attorney-in-fact*, and the note, bond, or other obligation, if there be such, on which the judgment is
76 based, shall be securely attached together by the clerk and filed by him among the records in his office.