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HOUSE BILL NO. 607

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 6.2-417, 8.01-269, 8.01-431, 8.01-434, 8.01-452, 8.01-455, 17.1-238, 17.1-250, 38.2-2419, 43-65, 43-68, 55-66.4:1, 55-157, 55-245, 58.1-3227, 58.1-3301, 58.1-3310, 58.1-3360, and 64.2-2703 of the Code of Virginia, relating to recordation and marginal release.

Patron—Robinson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-417, 8.01-269, 8.01-431, 8.01-434, 8.01-452, 8.01-455, 17.1-238, 17.1-250, 38.2-2419, 43-65, 43-68, 55-66.4:1, 55-157, 55-245, 58.1-3227, 58.1-3301, 58.1-3310, 58.1-3360, and 64.2-2703 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-417. Mortgage or deed of trust to contain notice that debt is subject to call or modification on conveyance of property.

Where any loan is secured by a mortgage or deed of trust on real property comprised of one- to four-family residential dwelling units, and the note or mortgage or deed of trust evidencing or securing the loan contains a provision that the holder of the note secured by such mortgage or deed of trust may accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of the security property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin thereof a statement, either in capital letters or underlined, that advises the borrower as follows: "Notice - The debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed."

§ 8.01-269. Dismissal or satisfaction of same.

If such attachment or lis pendens is quashed or dismissed or such cause is dismissed, or judgment or final decree in such attachment or cause is for the defendant or defendants, the court shall direct in its order (i) that the names of all interested parties thereto, as found in the recorded attachment or lis pendens be listed for the clerk, and (ii) that the attachment or lis pendens be released and, the court may, in an appropriate case, impose sanctions as provided in § 8.01-271.1. It shall then become the duty of the clerk in whose office such attachment or lis pendens is recorded, to record the order and, unless a microfilm recording process is used, to enter on the margin of the page of the book in which the same is recorded, such fact, together with a reference to in the order book together with a separate instrument or order releasing such lien and referencing the order book and page where such order the original lien is recorded. However, in any case in which an appeal or writ of error from such judgment or decree or dismissal would lie, the clerk shall not record the order or make the entry until after the expiration of the time in which such appeal or writ of error may be applied for, or if applied for after refusal thereof, or if granted, after final judgment or decree is entered by the appellate court.

In any case in which the debt for which such attachment is issued, or suit is brought and notice of lis pendens recorded is satisfied by payment, it shall be the duty of the creditor, within ten 10 days after payment of same, to mark such notice of lis pendens or attachment satisfied on the margin of the page of the deed book in which the same provide the clerk with a separate instrument or order for recordation releasing such lis pendens and referencing the order book and page where the original lis pendens is recorded, unless a microfilm recording process is used.

§ 8.01-431. Judgment or decree by confession in pending suit.

In any suit a defendant may, whether the suit is on the court docket or not, confess a judgment in the clerk's office for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book and be as final and as valid as if entered in court on the day of such confession. And the The clerk shall enter upon the margin of such book opposite where record such judgment or decree is entered, and the date and time of the day at which the same was confessed, and the. The lien of such judgment or decree shall run from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city in which land of the defendant lies. The clerk may require that a separate instrument be prepared setting forth the necessary information and shall record and index such instrument according to law.

§ 8.01-434. Lien of such judgments.

The clerk shall enter on the margin of the record of in the proper book any judgment confessed under the provisions of § 8.01-432, and the day and hour when the same was confessed, and the lien thereof shall attach and be binding from the time such judgment is recorded on the judgment lien docket

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59 of the clerk's office of the county or city in which land of the defendant lies. If the credit was extended
60 for personal, family or household purposes, the judgment shall not be a lien against the real estate of the
61 obligor or the basis of obtaining execution against his personal property until the expiration of the
62 twenty-one-day period allowed the judgment debtor as set forth in § 8.01-433. In the event the judgment
63 debtor files a motion or other pleading within such twenty-one-day period, the judgment shall not be a
64 lien against such real estate or its basis of execution against personal property until an order to that
65 effect is entered by the court. It will be presumed that the obligation is for personal, family or
66 household purposes if the debtor is a natural person, unless the plaintiff or someone on his behalf makes
67 oath or makes out and files an affidavit that the obligation was not for such purposes, or the obligation
68 for which judgment is confessed recites that it is for other purposes.

69 **§ 8.01-452. Entry of assignment of judgment on judgment lien docket.**

70 Whenever there shall be an assignment of a judgment, ~~there may be a notation of the assignment~~
71 ~~made upon the judgment docket, where the same is recorded, by the clerk. An such assignment, in order~~
72 ~~to be so noted,~~ must be in writing, showing the date thereof, the name of the assignor and assignee, the
73 amount of the judgment, and when and by what court granted, and either acknowledged as are deeds for
74 recordation in the clerks' offices of circuit courts in ~~this the~~ Commonwealth, or signed by the assignor,
75 attested by two witnesses; ~~or such. Such judgment may be assigned by notation on the margin of the~~
76 ~~judgment lien docket on shall be recorded in a separate instrument referencing~~ the page of the book
77 where same is docketed, by the judgment creditor or his attorney of record, ~~and attested by the clerk.~~
78 The assignment, ~~after the same is noted upon the judgment docket as is herein provided,~~ shall be filed
79 by the clerk with the other papers in the case in his office. When such assignment is ~~made and noted~~ as
80 herein provided, further executions shall be issued in the name of the assignee as the plaintiff in the
81 case.

82 **§ 8.01-455. Court, on motion of defendant, etc., may have payment of judgment entered.**

83 A. A defendant in any judgment, his heirs or personal representatives, may, on motion, after ten
84 days' notice thereof to the plaintiff in such judgment, or his assignee, or if he be dead, to his personal
85 representative, or if he be a nonresident, to his attorney, if he have one, apply to the court in which the
86 judgment was rendered, to have the same marked satisfied, and upon proof that the judgment has been
87 paid off or discharged, such court shall order such satisfaction to be ~~entered on the margin of the page~~
88 ~~recorded in the judgment docket book wherein such together with a separate instrument or order~~
89 ~~discharging the judgment and referencing the order book and page where the original judgment was~~
90 entered, and a certificate of such order to be made to the clerk of the court in which such judgment is
91 required by § 8.01-446 to be docketed, and the clerk of such court shall immediately, upon the receipt
92 of such certificate, enter the same in the ~~proper column of the judgment docket opposite the place book~~
93 where such judgment is docketed. If the plaintiff be a nonresident and have no attorney of record
94 residing in this Commonwealth, the notice may be published and posted as an order of publication is
95 required to be published and posted under §§ 8.01-316 and 8.01-317. Upon a like motion and similar
96 proceeding, the court may order ~~to be marked that a separate instrument or order be recorded to reflect~~
97 ~~that a judgment has been "discharged in bankruptcy," for any judgment which that may be shown to~~
98 have been so discharged.

99 B. The cost of such proceedings, including reasonable ~~attorney's~~ attorney fees, may be ordered to be
100 paid by the plaintiff.

101 **§ 17.1-238. State highway plat book.**

102 A loose-leaf book known as "state highway plat book," which shall be provided by the Department
103 of Transportation, shall be installed in the circuit court clerk's office of each county of this
104 Commonwealth and in the clerk's office of the circuit court of any city wherein the Department of
105 Transportation has acquired any interest in land, and all highway plats pertaining to the primary and
106 secondary highway systems, and all plats in connection therewith, shall be filed therein by the clerk. The
107 clerk shall note on each recorded deed relating to such plats and ~~on the margin of the page of in the~~
108 deed book, wherein such deed is recorded, the numbers of the state highway plat book and page wherein
109 such plats are filed. The clerk so filing the plats and so noting the same shall receive a fee of five
110 dollars. All plats filed prior to July 1, 1950, in such state highway plat book be and the same are hereby
111 validated.

112 **§ 17.1-250. Correction of indexes.**

113 No clerk or deputy clerk of any court in which deeds are recorded shall correct any indexing mistake
114 by insertion, or alter or reprint the page, unless, at the time of such insertion, alteration or reprinting, he
115 (i) notes the date and nature of the change in the ~~margin of the index and places his name or initials~~
116 ~~upon same~~ or (ii) by any other means capable of maintaining a permanent record of the change together
117 with the original recording, indicates the date and nature of the change and the name of the person who
118 made it.

119 **§ 38.2-2419. Notation of revocation; indexing.**

120 When the power of attorney has been revoked in accordance with § 38.2-2417, the clerk in whose

office the power of attorney is recorded shall ~~note record~~ its revocation ~~on the margin of the page of in~~ the deed book where the power of attorney is recorded; ~~together with a. The revocation shall reference~~ to the book and page where the instrument of revocation *original power of attorney* is recorded. The clerk may require that a revocation of a power of attorney be prepared as a separate instrument setting forth the necessary information, and such instrument shall be recorded and indexed according to law. The clerk shall index the instrument of revocation both in the name of the fidelity and surety insurer and of its attorney-in-fact.

§ 43-65. Protection of assignees, transferees or endorsees of debts secured by mechanics' or crop liens.

Whenever any debt secured on real estate or personal property by a mechanics' or crop lien has been assigned, transferred, or endorsed to another, in whole or in part by the original payee thereof, such payee, assignee, transferee, or endorsee, may cause a memorandum or statement of the assignment to such assignee, transferee, or endorsee to be ~~entered on the margin of the page in the book where such~~ *encumbrance securing the same* is recorded, which memorandum or statement shall be signed by the assignor, transferrer, or endorser, *or* his duly authorized agent or attorney, and when so signed and the signature thereto attested by the clerk in whose office such encumbrance is recorded the same shall operate as a notice of such assignment and transfer. *Such assignment, transfer, or endorsement shall reference the book and page where the original debt secured on real estate or personal property is recorded.* And where such transfer by the payee is so entered ~~on the margin of in the proper book,~~ subsequent transfers may likewise be entered in the same manner and with like effect. Provided, however, this section shall not apply to conditional sales contracts of personal property.

§ 43-68. Releases made by court.

Any person who owns or has any interest in real estate or personal property on which such lien exists may, after twenty days' notice thereof to the person entitled to such lien, apply to the circuit or corporation court of the county or corporation in whose clerk's office such encumbrance is recorded, or to the Circuit Court of the City of Richmond, if it be in the clerk's office of such court, to have the same released or discharged; and upon proof that it has been paid or discharged, or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien, raising a presumption of payment, and which is not rebutted at the hearing, or upon proof that no suit, as defined by § 43-17, has been brought to enforce the same within the time prescribed by such section; such court shall order the same to be ~~entered recorded~~ by the clerk ~~on the margin of the page in the book wherein the lien is recorded, which entry, when so made, shall operate as a release of such lien. Such release shall reference the book and page where the original lien securing such interest in real estate or personal property is recorded.~~

All releases made prior to June 24, 1944, by any court under this section upon such presumption of payment so arising and not rebutted, shall be validated.

§ 55-66.4:1. Permissible form for certificate of satisfaction or certificate of partial satisfaction.

Any release by a certificate of satisfaction or certificate of partial satisfaction shall be in conformity with §§ 55-66.3, 55-66.3:1 and 55-66.4 and shall conform substantially with the following forms:

CERTIFICATE OF SATISFACTION

Place of Record
Date of Note/Deed of Trust
Face Amount Secured/Face Amount of Note:
Deed Book Page
Name(s) of Grantor(s)/Maker(s);
Name(s) of Trustee(s)
Face Amount of Note(s) \$

I/we, holder(s) of the above-mentioned note(s) secured by the above-mentioned deed of trust, do hereby certify that the same has/have been paid in full, and the lien therein created and retained is hereby released. GIVEN UNDER MY/OUR HAND(S) THIS DAY OF, 20

.....
.....

(NOTE HOLDERS)

Commonwealth of Virginia,
County/City of to wit:
Subscribed, sworn to and acknowledged before me by
this day of, 20

My Commission Expires:

NOTARY PUBLIC

VIRGINIA;

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT

This certificate was presented, and with the Certificate annexed,
admitted to record on at o'clockm.
Clerk's fees: \$ have been paid.

Attest:, Deputy Clerk

or:

CERTIFICATE OF PARTIAL SATISFACTION

Place of Record
Date of Deed of Trust
Deed Book Page
Name(s) of Grantor(s)
Name(s) of Trustee(s)
Maker(s) of Note(s)
Date of Note(s)
Face Amount of Note(s) \$

The lien of the above-mentioned deed of trust securing the
above-mentioned note is released insofar as the same is
applicable to (description of property) recorded
in deed book at page in the clerk's
office of this court. The undersigned is/are the legal holder(s)
of the obligation, note, bond or other evidence of debt secured
by said deed of trust.

Given under my/our hand(s) this day of, 20 ..

(NOTE HOLDERS)

Commonwealth of Virginia,

County/City of to wit:

Subscribed, sworn to and acknowledged before me by
this day of, 20

My Commission Expires:

NOTARY PUBLIC

~~Notwithstanding the provisions of The clerk shall satisfy the requirements of § 17.1-228, the clerk shall note on the margin of the deed book where a deed of trust is recorded, a reference to the deed book and page number where the certificate of satisfaction or certificate of partial satisfaction is recorded. The provisions of this paragraph shall not apply to procedural microfilm recording and microfilmed records.~~

Certificates conforming to this section prior to the amendment effective July 1, 1984, shall be deemed to be in substantial conformity thereto.

§ 55-157. Substitution of another trustee by creditors.

A majority of the unsecured creditors in number and amount of the assignor may agree in writing upon a trustee different from the one named in the deed of assignment, whereupon upon petition to the court, or the judge thereof in vacation, which would have jurisdiction if suit were brought against the assignor, such agreed trustee may be substituted in lieu of such named trustee with all of the rights, powers and duties conferred upon such named trustee in the deed of assignment and the clerk of the court shall cause to be entered ~~upon the margin of~~ *in* the deed book where the deed of assignment is recorded the fact of the entry of such order and a reference to the order book and page where the same is recorded, together with the name of the substituted trustee, and shall make proper indexing. The substitute trustee shall reside in the county or city in which the property that is conveyed in the deed of assignment or the greater portion thereof in value is located.

§ 55-245. Written act of reentry to be returned and recorded, and certificate thereof published.

When actual reentry is made, the party by or for whom the same is made shall return a written act of reentry, sworn to by the sheriff or other officer acting therein, to the clerk of the circuit court of the

county or corporation court of the city wherein the lands or tenements are, who shall record the same in the deed book, and shall deliver to the party making the reentry a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded. Such certificate shall be published at least once a week for two months successively, in some newspaper published in or nearest to such county or corporation. Such publication shall be proved by affidavit to the satisfaction of the clerk, who shall ~~note the fact in the margin of the record~~ *record such affidavit in the deed book against the record of the act of reentry, in the words "Publication made and proved according to law. A.B., Clerk"; and. Such affidavit shall reference the book and page where the original written act of reentry was recorded.* The clerk shall return the original act of reentry to the party entitled thereto. The written act of reentry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence, in all cases, of the facts therein set forth.

§ 58.1-3227. Proration of delinquent taxes after purchase of part of tract.

Any person who shall become the purchaser or in anywise acquire a portion of a tract of land or one or more lots, more than one of which are together assessed on one or more lines of the land assessment books, or any person having the right to charge a portion of a tract of land or one or more such lots with a debt, may petition the circuit court of the county or city wherein such real estate is situated to determine how much and what part of any delinquent tax, levy or assessment is properly chargeable against the land or lot or lots so purchased or acquired by such person or so liable to be charges for a debt. All persons interested in such real estate shall be summoned and made parties defendant to such petition and shall be entitled to ten days' notice thereof before a hearing may be held. The court may enter such order as may appear just and proper and, upon payment of the amount of the tax, levy or assessment due from the petitioners, the clerk of the court shall ~~note record~~ *record* the same ~~on the margin of~~ *in* the delinquent tax books. Any person so paying part of any delinquent tax levy or assessment shall be entitled to sue and obtain judgment against any person primarily liable for such delinquent tax or who may have contracted for the payment of the same and failed to pay.

§ 58.1-3301. Form of land book.

A. The land books may be produced in one of the following forms: (i) paper; (ii) microfilm, microfiche, or any other microphotographic process; or (iii) electronic process. Such microfilm and microphotographic processes shall meet state archival microfilm standards and state electronic records guidelines pursuant to § 42.1-82. The Department of Taxation shall prescribe the form of the land book to be used by the commissioner of the revenue and shall furnish each commissioner of the revenue with four copies of blank land books prepared in the form so prescribed. The land books may be produced in the form of microfilm, microfiche, or any other similar microphotographic process and shall be distributed as provided in § 58.1-3310 in the form of such process so long as such process complies with standards adopted pursuant to regulations issued under § 42.1-82 for microfilm, microfiche, or such other microphotographic process and is acceptable to and meets the requirement of the recipients of copies of the land book as designated by § 58.1-3310.

B. Tracts of lands in counties shall be entered in the land book by magisterial or school districts and town lots shall be entered upon sheets provided in the land book for that purpose. The governing body of any county having sanitary districts may provide by resolution that land books, personal property books and other tax assessment records be entered and arranged alphabetically to show the persons chargeable with taxes in each such district. The sanitary district in which the property is located shall be designated by an appropriate coding which shall provide for the means of recapitulation by sanitary districts, setting forth the total assessment and tax levy for each such district.

C. Nothing in this section shall be construed to prohibit any commissioner of the revenue of any city from using a land book in the form prescribed and furnished by or under the authority of the council of his city and at the cost of his city, provided that whether the land book is furnished by the city or the Tax Commissioner, it shall contain the name and street address of every owner of real property in the local jurisdiction. In cases where real property is owned by more than one person, the land book shall contain the name and street address of at least one of the owners.

D. In the event real estate is assessed at use value as provided in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of this title, the land book shall show both the use value and the fair market value.

§ 58.1-3310. Commissioner of the revenue to retain original land book; disposition of copies; penalties.

Each commissioner of the revenue shall retain in his office the original land book. Each commissioner of the revenue shall deliver to the treasurer of his county or city and, if requested by the Department in writing, to the Department of Taxation one copy each of the land book on or before September 1 of each year or within ninety days from the date on which the rate of tax on real property has been determined, whichever is later. However, the Department may, for good cause, extend the time for delivery of such copies. Each commissioner of the revenue shall file a copy of the land book in the office of the clerk of the circuit court of his county or city. Such clerk shall preserve such copies in his

299 office, but the commissioner of the revenue need not preserve the original nor the treasurer his copy for
300 a longer period than six years following the tax year to which such books relate. *The commissioner or*
301 *the clerk may satisfy the requirements of this section by use of (i) paper; (ii) microfilm, microfiche, or*
302 *any other microphotographic process; or (iii) electronic process.*

303 **§ 58.1-3360. Credit on current year's taxes when land acquired by United States, the**
304 **Commonwealth, a political subdivision, a church or religious body, or a disabled veteran.**

305 Any taxpayer whose lands, or any portion thereof, are in any year acquired or taken in any manner
306 by the United States; the Commonwealth; a political subdivision; a church or religious body, which is
307 exempt from taxation by Article X, Section 6 of the Constitution of Virginia; or a disabled veteran for
308 that portion of the property that is exempt from taxation pursuant to § 58.1-3219.5, shall be relieved
309 from the payment of taxes and levies from the date of divestment of such land for that portion of the
310 year in which the property was taken or acquired. The county treasurers as to land situated in counties
311 and the city treasurers and city collectors as to lands situated in cities shall receive from and receipt to
312 the original owner of the lands so taken, for his proportionate part of the taxes and levies for the year
313 and credit the payment on the tax tickets and shall return at the same time he makes his return of lands
314 and lots improperly assessed, as required by law, the proportional part of the taxes and levies exonerated
315 from taxation for any such year, indicating ~~on the margin of the list~~ the date on which the property was
316 acquired by the government or religious body. Such list, when approved by the proper authorities, shall
317 be considered as a credit to any such treasurer or collector in the settlement of the accounts for such
318 year.

319 **§ 64.2-2703. Notice of release; recordation; fee.**

320 A. A fiduciary or other person, association, or corporation having possession or control of any
321 property subject to a power of appointment, other than the donee of such power, shall not be deemed to
322 have notice of a release of the power until the original or a copy of the release is delivered to such
323 fiduciary or other person, association, or corporation.

324 B. A purchaser or mortgagee of any real property subject to a power of appointment, without actual
325 notice of the release, shall not be deemed to have notice of a release of the power until (i) the original
326 or a copy of the release is recorded in the circuit court clerk's office in the county or city in which the
327 real property is located, *referencing the will or deed book where the instrument creating the power is*
328 *recorded, and* (ii) the deed, will, or other instrument creating the power, or a certified copy thereof, is
329 recorded in the same clerk's office, ~~and (iii) an appropriate notation is entered on the margin of the will~~
330 ~~or deed book where the instrument creating the power is recorded referring to the deed book and page~~
331 ~~where the release is recorded.~~

332 C. No release shall be invalid or ineffective for failing to comply with subsection A or B.

333 D. The clerk shall record a release of a power of appointment in the deed book and index the release
334 in the daily and general indexes with the name of the donee being entered on the grantor index. For
335 each such recordation, the clerk shall be paid a fee in the amount applicable to the recordation of deeds
336 as set forth in subdivision A 2 of § 17.1-275 and an additional fee of \$5.