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HOUSE BILL NO. 2323

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 17.1-223 of the Code of Virginia, relating to clerks; refusal to record certain liens or encumbrances.*

Patron—Yancey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 17.1-223 of the Code of Virginia is amended and reenacted as follows:****§ 17.1-223. Duty of clerk to record writings, etc., and make index.**

A. Every writing authorized by law to be recorded, with all certificates, plats, schedules or other papers thereto annexed or thereon endorsed, upon payment of fees for the same and the tax thereon, if any, shall, when admitted to record, be recorded by or under the direction of the clerk on such media as are prescribed by § 17.1-239. However, unless a cover sheet is submitted with the writing in accordance with § 17.1-227.1, the clerk has the authority to reject any writing for recordation unless (i) as to any individual who is a party to such writing, the surname only of such individual is underscored or written entirely in capital letters in the first clause of the writing that identifies the names of the parties; (ii) each page of the writing is numbered consecutively; (iii) in the case of a writing described in § 58.1-801 or 58.1-807, the amount of the consideration and the actual value of the property conveyed is stated on the first page of the writing; (iv) the laws of the United States or the Commonwealth under which any exemption from recordation taxes is claimed is clearly stated on the face of the writing; and (v) the name of each party to such writing under whose name the writing is to be indexed as grantor, grantee, or both is listed in the first clause of the writing that identifies the names of the parties and identified therein as grantor, grantee, or both, as applicable. Such writing, once recorded, may be returned to any party to such writing who is identified therein as a grantee unless otherwise indicated clearly on the face of the writing, or any cover sheet, including an appropriate current address to which such writing shall be returned.

B. The attorney or party who prepares the writing for recordation shall ensure that the writing satisfies the requirements of subsection A and that (i) the social security number is removed from the writing prior to the instrument being submitted for recordation, (ii) a deed conveying residential property containing not more than four residential dwelling units states on the first page of the document the name of the title insurance underwriter insuring such instrument or a statement that the existence of title insurance is unknown to the preparer, and (iii) a deed conveying residential property containing not more than four residential dwelling units states on the first page of the document that it was prepared by the owner of the real property or by an attorney licensed to practice law in the Commonwealth where such statement by an attorney shall include the name and Virginia State Bar number of the attorney who prepared the deed, provided, however, that clause (iii) shall not apply to deeds of trust or to deeds in which a public service company, railroad, or cable system operator is either a grantor or grantee, and it shall be sufficient for the purposes of clause (iii) that deeds prepared under the supervision of the Office of the Attorney General of Virginia so state without the name of an attorney or bar number.

C. A writing that appears on its face to have been properly notarized in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) shall be presumed to have been notarized properly and may be recorded by the clerk.

D. If the writing is accepted for recordation in the deed books, it shall be deemed to be validly recorded for all purposes. Such books shall be indexed by the clerk as provided by § 17.1-249 and carefully preserved. Upon admitting any such writing or other paper to record, the clerk shall endorse thereon the day and time of day of such recordation. More than one book may be used contemporaneously under the direction of the clerk for the recordation of the writings mentioned in this section whenever it may be necessary to use more than one book for the proper conduct of the business of the clerk's office.

E. *The clerk may refuse to record a lien or encumbrance of a person convicted of a violation of § 18.2-213.2, provided that such lien or encumbrance is the same or substantially similar to the lien or encumbrance filed in relation to such conviction. A clerk may further refuse to record a lien or encumbrance if such clerk reasonably believes such lien or encumbrance is being filed maliciously. If a clerk refuses to record such a lien or encumbrance, the clerk shall issue written notice of such refusal to the person whose lien or encumbrance is refused, who shall be afforded an opportunity to be heard*

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59 *by the judge of the circuit court in which the lien or encumbrance was filed as to why such lien or*
60 *encumbrance is not malicious.*