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## SENATE BILL NO. 700

Offered January 8, 2020

Prefiled January 7, 2020

*A BILL to amend and reenact §§ 17.1-249 and 64.2-409 of the Code of Virginia, relating to indexing of wills.*

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Patron—Obenshain

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Referred to Committee on the Judiciary

**Be it enacted by the General Assembly of Virginia:****1. That §§ 17.1-249 and 64.2-409 of the Code of Virginia are amended and reenacted as follows:****§ 17.1-249. General indexes for clerks' offices; daily index.**

A. There shall be kept in every clerk's office modern, family name or ledgerized alphabetical key-table general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books. The clerk shall enter daily, either in such general indexes or in the daily index to instruments admitted to record, every deed, corrected or amended deed, deed of release, deed of trust, contract of sale, or any addendum, modification, or memorandum relating to any of these instruments, indexing each instrument in the names of all parties identified in the instrument as grantor, grantee, or both, as required by § 17.1-223, or identified in the cover sheet as grantor, grantee, or both, pursuant to § 17.1-227.1, as applicable.

B. A deed of trust made to one or more trustees to secure the payment of an indebtedness, and any certificate of satisfaction or certificate of partial satisfaction, assignment, loan modification agreement, substitution of trustees or similar instrument subsequently recorded with respect to such deed, shall be sufficiently indexed if the clerk enters in the appropriate places in the general index to deeds provided for in subsection A the names of the grantor and the name of the beneficiary or, in lieu of the name of the beneficiary, the first listed trustee as grantee. The beneficiary need not be named in the first clause of the deed as a condition of recordation.

C. A deed made by a person in a representative capacity, or by devisees or coparceners, shall be indexed in the names of the grantors and grantees and the name of the former record title owner listed in the first clause of the instrument.

D. The general indexes of civil causes shall be sufficiently kept if the clerk indexes such causes under the short style or title thereof, except that in multiple suits brought under § 58.1-3968, the names of all of the defendants disclosed by the pleadings shall be entered in the general index or book.

E. Every deed of conveyance of real estate in which a vendor's lien is reserved shall be indexed twice so as to show not only the conveyance from the grantor to the grantee in the instrument, but also the reservation of the lien as if it were a grant of such lien from the grantee to the grantor by a separate instrument and the fact of the lien shall be noted in the index.

F. *Every will shall be indexed in the name of the executor listed in such instrument.*

G. All deed books, miscellaneous liens, will books, judgment dockets, and court order books shall be numbered or otherwise adequately designated and the clerk upon the delivery of any writing to him for record required by law to be recorded shall duly index it upon the general index in the manner hereinbefore required. When the writing has been actually transcribed on the book, the clerk shall add to the general index the number of the book in which, and the page on which, the writing is recorded.

H. The clerk on receipt of any such writing for record may immediately index it in a book to be known as the "daily index of instruments admitted to record" and within 90 days after its admission to record the clerk shall index all such writings indexed in the daily index in the appropriate general index as hereinbefore provided. The daily index book shall, at all times, be kept in the office of the clerk and conveniently available for examination by the public. During the period permitted for transfer from the daily index to the general index, indexing in the daily index shall be a sufficient compliance with the requirements of this section as to indexing.

I. The judge of any circuit court may make such orders as he deems advisable as to the time and method of indexing the order books in the clerk's office of the court and may dispense with a general index for order books of the court.

J. The clerk may maintain his indexes on computer, word processor, microfilm, microfiche, or other micrographic medium and, in addition, may maintain his grantor and grantee indexes on paper.

**§ 64.2-409. Wills of living persons lodged for safekeeping with clerks of certain courts.**

A. A person or his attorney may, during the person's lifetime, lodge for safekeeping with the clerk of the circuit court serving the jurisdiction where the person resides any will executed by such person. The

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59 clerk shall receive such will and give the person lodging it a receipt. The clerk shall (i) place the will in  
60 an envelope and seal it securely, (ii) number the envelope and endorse upon it the name of the testator  
61 and the date on which it was lodged, and (iii) index the same alphabetically *by name of the executor* in  
62 a permanent index that shows the number and date such will was deposited.

63 B. An attorney-at-law, bank, or trust company that has held a will for safekeeping for a client for at  
64 least seven years and that has no knowledge of whether the client is alive or dead after such time may  
65 lodge such will with the clerk as provided in subsection A.

66 C. The clerk shall carefully preserve the envelope containing the will unopened until it is returned to  
67 the testator or his nominee in the testator's lifetime upon request of the testator or his nominee in  
68 writing or until the death of the testator. If such will is returned during the testator's lifetime and is later  
69 returned to the clerk, it shall be considered to be a separate lodging under the provisions of this section.

70 D. Upon notice of the testator's death, the clerk shall open the will and deliver the same to any  
71 person entitled to offer it for probate.

72 E. The clerk shall charge a fee of \$2 for lodging, indexing, and preserving a will pursuant to this  
73 section.

74 F. The provisions of this section are applicable only to the clerk's office of a court where the judge  
75 or judges of such court have entered an order authorizing the use of the clerk's office for such purpose.

76 G. The clerk may destroy any will that has been lodged in his office for safekeeping under this  
77 section for 100 years or more.