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SENATE BILL NO. 1327

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact §§ 8.01-462, 36-139, 55.1-320, 55.1-321, and 55.1-1303 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2223.5, relating to housing protections; foreclosures; manufactured housing.*

Patrons—McClellan, Hashmi and Mason; Delegates: Bourne, Carr and Torian

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-462, 36-139, 55.1-320, 55.1-321, and 55.1-1303 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2223.5 as follows:

§ 8.01-462. Jurisdiction of equity to enforce lien of judgment; when it may decree sale.

A. Jurisdiction to enforce the lien of a judgment shall be in equity. If it ~~appear~~ appears to the court that the rents and profits of all real estate subject to the lien will not satisfy the judgment in five years, the court may decree such real estate, or any part thereof, to be sold, and the proceeds applied to the discharge of the judgment.

B. A circuit court of competent jurisdiction may decree the sale of real estate used as the owner's primary residence to enforce a judgment lien encumbering it only if the value of such real estate, according to the most recent tax assessment, is greater than the median assessed value of single family dwellings in the Commonwealth, according to the U.S. Census Bureau.

§ 15.2-2223.5. Comprehensive plan shall address manufactured housing.

During an amendment of a locality's comprehensive plan after July 1, 2021, the locality shall incorporate into its comprehensive plan strategies to promote manufactured housing as a source of affordable housing. Such strategies may include (i) the preservation of existing manufactured housing communities, (ii) the creation of new manufactured home communities, and (iii) the creation of new manufactured home subdivisions.

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and

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SB1327

59 administering programs to inform all citizens about housing and housing-related programs that are
60 available on all levels of government; designing and administering educational programs to prepare
61 families for home ownership and counseling them during their first years as homeowners; and promoting
62 educational programs to assist sponsors in the development of low and moderate income housing as well
63 as programs to lessen the problems of rental housing management.

64 11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

65 12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

66 13. Establishing and operating a Building Code Academy for the training of persons in the content,
67 application, and intent of specified subject areas of the building and fire prevention regulations
68 promulgated by the Board of Housing and Community Development.

69 14. Administering, in conjunction with the federal government, and promulgating any necessary
70 regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

71 15. Identifying and disseminating information to local governments about the availability and
72 utilization of federal and state resources.

73 16. Administering, with the cooperation of the Department of Health, state assistance programs for
74 public water supply systems.

75 17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust
76 Fund.

77 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing
78 Trust Fund and to carry out the policies and procedures established by the Board.

79 19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing
80 Trust Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are
81 to be made from such fund; directing the Virginia Housing Development Authority and the Department
82 as to the closing and disbursing of such loans and grants and as to the servicing and collection of such
83 loans; directing the Department as to the regulation and monitoring of the ownership, occupancy and
84 operation of the housing developments and residential housing financed or assisted by such loans and
85 grants; and providing direction and guidance to the Virginia Housing Development Authority as to the
86 investment of moneys in such fund.

87 20. Establishing and administering program guidelines for a statewide homeless intervention program.

88 21. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block
89 Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and
90 associated services to low-income households within the Commonwealth in accordance with applicable
91 federal law and regulations.

92 22. Developing a strategy concerning the expansion of affordable, accessible housing for older
93 Virginians and Virginians with disabilities, including supportive services.

94 23. Serving as the Executive Director of the Commission on Local Government as prescribed in
95 § 15.2-2901 and perform all other duties of that position as prescribed by law.

96 24. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the
97 creation and implementation of housing programs and community development for the purpose of
98 meeting the housing needs of persons who have been released from federal, state, and local correctional
99 facilities into communities.

100 25. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title
101 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing
102 Development Authority.

103 26. Developing a statement of tenant rights and responsibilities explaining in plain language the
104 rights and responsibilities of tenants under the Virginia Residential Landlord and Tenant Act
105 (§ 55.1-1200 et seq.) and maintaining such statement on the Department's website. The Director shall
106 also develop and maintain on the Department's website a printable form to be signed by the parties to a
107 written rental agreement acknowledging that the tenant has received from the landlord the statement of
108 tenant rights and responsibilities as required by § 55.1-1204. The Director may at any time amend the
109 statement of tenant rights and responsibilities and such printable form as the Director deems necessary
110 and appropriate. The statement of tenant rights and responsibilities shall contain a plain language
111 explanation of the rights and responsibilities of tenants in at least 14-point type. The statement shall
112 provide the telephone number and website address for the statewide legal aid organization and direct
113 tenants with questions about their rights and responsibilities to contact such organization.

114 27. *Developing a statement of tenant rights and responsibilities explaining in plain language the*
115 *rights and responsibilities of tenants under the Virginia Manufactured Home Lot Rental Act*
116 *(§ 55.1-1300 et seq.) and maintaining such statement on the Department's website. The Director shall*
117 *also develop and maintain on the Department's website a printable form to be signed by the parties to a*
118 *written rental agreement acknowledging that the tenant has received from the landlord the statement of*
119 *tenant rights and responsibilities as required by § 55.1-1303. The Director may at any time amend the*
120 *statement of tenant rights and responsibilities and such printable form as the Director deems necessary*

and appropriate. The statement of tenant rights and responsibilities shall contain a plain language explanation of the rights and responsibilities in at least 14-point type. The statement shall provide the telephone number and website address for the statewide legal aid organization and direct tenants with questions about their rights and responsibilities to contact such organization.

28. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

§ 55.1-320. How deed of trust construed; duties, rights, etc., of parties.

Every deed of trust to secure debts or indemnify sureties is in the nature of a contract and shall be construed according to its terms to the extent not in conflict with the requirements of law. Unless the deed of trust provides otherwise, it shall be construed to impose and confer upon the parties and beneficiaries the following duties, rights, and obligations in like manner as if the same were expressly provided for by such deed of trust:

1. The deed shall be construed as given to secure the performance of each of the covenants entered into by the grantor as well as the payment of the primary obligation.

2. The grantor shall be deemed to covenant that he will pay all taxes, levies, assessments, and charges upon the property, including the fees and charges of such agents or attorneys as the trustee may deem advisable to employ at any time for the purpose of the trust, so long as any obligation upon the grantor under the deed of trust remains undischarged.

3. The grantor shall be deemed to covenant that he will keep the improvements on the property in tenantable condition, whether such improvements were on the property when the deed of trust was given or were placed there at a later time.

4. The grantor shall be deemed to covenant that no waste shall be committed or suffered upon the property.

5. The grantor shall be deemed to covenant that in the event of his failure to meet any obligations imposed upon him, then the trustee or any beneficiary may, at his option, satisfy such obligations. The money so advanced, with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be otherwise recoverable from the grantor as a debt. In addition, to the extent not otherwise covered, the grantor shall be deemed to covenant that amount advanced or incurred by the trustee or any beneficiary under a deed of trust (i) with respect to an obligation secured by a lien or encumbrance prior to the lien of the deed of trust or (ii) for the protection of the lien secured by the deed of trust, together with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, to be paid next after expenses of executing the trust.

6. A covenant to pay interest shall be deemed a covenant to pay interest on the principal balance as such rate may vary or be modified from time to time by the parties under the original instruments or agreements or a written agreement of modification, whether or not recorded, and all the interest on the principal secured by the deed of trust shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust.

Any covenant, otherwise authorized by law, that the lender shall be entitled to share in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event, shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be specified in the recorded deed of trust or other recorded document in order to be notice of record as against subsequent parties.

7. In the event of default in the payment of the debt secured, or any part thereof, at maturity, or in the payment of interest when due, or of the breach of any of the covenants entered into or imposed upon the grantor, then at the request of any beneficiary the trustee shall forthwith declare all the debts and obligations secured by the deed of trust at once due and payable and may take possession of the property and proceed to sell the same at auction at the premises or in the front of the circuit court building or at such other place in the county or city in which the property or the greater part thereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the land was formerly a part, as the trustee may select upon such terms and conditions as the trustee may deem best.

8. If the sale is upon credit terms, the deferred purchase money shall bear interest from the day of sale and shall be secured by a deed of trust upon the property contemporaneous with the trustee's deed to the purchaser.

9. The party secured by the deed of trust, or the holders of greater than 50 percent of the monetary obligations secured thereby, shall have the right and power to appoint one or more substitute trustees for any reason and, regardless of whether such right and power is expressly granted in such deed of trust, by executing and acknowledging an instrument designating and appointing a substitute. When the instrument of appointment has been executed, the substitute trustee named therein shall be vested with

all the powers, rights, authority, and duties vested in the trustee in the original deed of trust. The instrument of appointment shall be recorded in the office of the clerk in which the original deed of trust is recorded prior to or at the time of recordation of any instrument in which a power, right, authority, or duty conferred by the original deed of trust is exercised.

10. A trustee shall not sell the property secured by the deed of trust without sending the notice required by § 55.1-321 to the owner. The trustee shall sign an affidavit, and attach the notice to such affidavit, attesting that such notice has been sent to the owner. Prior to commencing a foreclosure sale, the trustee shall provide copies of such affidavit and notice to each potential bidder.

§ 55.1-321. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

A. In addition to the advertisement required by § 55.1-322, 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, and such notice shall include either (i) the instrument number or deed book and page numbers of the instrument of appointment filed pursuant to § 55.1-320, or (ii) a copy of the executed and notarized appointment of substitute trustee by personal delivery or by mail to (a) 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; (b) 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; (c) any assignee of such a note secured by a deed of trust, provided that the assignment and address of assignee are likewise recorded at least 30 days prior to the proposed sale; (d) any condominium unit owners' association that has filed a lien pursuant to § 55.1-1966; (e) any property owners' association that has filed a lien pursuant to § 55.1-1833; and (f) any proprietary lessees' association that has filed a lien pursuant to § 55.1-2148. Written notice shall be given pursuant to clauses (d), (e), and (f) only if the lien is recorded at least 30 days prior to the proposed sale. If the secured party has received notification that the owner of the property to be sold is deceased, the notice required by clause (a) shall be given to (1) the last known address of such owner as such address appears in the records of the party secured; (2) any personal representative of the deceased's estate whose appointment is recorded among the records of the circuit court where the property is located, at the address of the personal representative that appears in such records; and (3) any heirs of the deceased who are listed on the list of heirs recorded among the records of the circuit court where the property is located, at the addresses of the heirs that appear in such records. 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 44 60 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 44 60 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 in this subsection 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 to give notice as required by this subsection shall not impose liability on either the trustee or the secured party. *The foreclosure sale cannot go forward unless the trustee has proof that the notice has been sent.*

B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may nonetheless proceed to sale, provided that the beneficiary has given written notice to the person required to pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee upon expiration of 44 60 days from the date of mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person required to pay the instrument as reflected in the records of the beneficiary and shall include the name and mailing address of the trustee. The notice shall further advise the person required to pay the instrument that if he believes he may be subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the circuit court of the county or city where the property or some part thereof lies for an order requiring the beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the sale on a finding that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee to sell or the validity of the sale.

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

D. In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice is required to be given pursuant to this section.

E. The notice to the owner in subdivisions A and B shall include the website address of the U.S. Housing and Urban Development's (HUD) Office of Housing Counseling with a listing of HUD-certified housing counseling agencies, the website address and telephone number of the statewide legal aid center, and the following language, or language that is substantially similar, in at least 12-point type: "This is NOT a notice to vacate the premises. You should consider contacting an attorney or your local legal aid or housing counseling agency."

F. The notice to the owner in subdivisions A and B shall include the date of the last payment received and the amount received; the total amount of principal, interest, costs, and fees due in arrears; and the remaining total principal balance due on the instrument.

§ 55.1-1303. Landlord's obligations.

The landlord shall:

1. Comply with applicable laws governing health, zoning, safety, and other matters pertaining to manufactured home parks;

2. Make all repairs and do whatever is necessary to put and keep the manufactured home park in a fit and habitable condition, including maintaining in a clean and safe condition all facilities and common areas provided by the landlord for use by the tenants of two or more manufactured home lots;

3. Maintain in good and working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord;

4. Provide and maintain appropriate receptacles as a manufactured home park facility, except when door-to-door garbage and waste pickup is available within the manufactured home park for the collection and storage of garbage and other waste incidental to the occupancy of the manufactured home park, and arrange for the removal of the garbage and other waste; and

5. Provide reasonable access to electric, water, and sewage disposal connections for each manufactured home lot. In the event of a planned disruption by the landlord in electric, water, or sewage disposal services, the landlord shall give written notice to tenants no less than 48 hours prior to the planned disruption in service; and

6. Provide a copy of any written rental agreement and the statement of tenant rights and responsibilities to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement and statement shall not affect the validity of the agreement. However, the landlord shall not file or maintain an action against the tenant in a court of law for any alleged lease violation until he has provided the tenant with the statement of tenant rights and responsibilities.

2. That the Department of Housing and Community Development shall convene a stakeholder group consisting of landlords, property managers, and tenants, as well as attorneys knowledgeable in the Virginia Manufactured Home Lot Rental Act (§ 55.1-1300 et seq. of the Code of Virginia) and other applicable provisions of the Code of Virginia for the purposes of providing input into (i) the development of the form to be developed by the Director of the Department of Housing and Community Development for posting on its website pursuant to § 36-139 of the Code of Virginia, as amended by this act, acknowledging that a tenant has received from the landlord the statement of tenant rights and responsibilities and (ii) any updates to the statement of tenant rights and responsibilities.