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HOUSE BILL NO. 2099

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Coyner
on January 25, 2021)

(Patron Prior to Substitute—Delegate Coyner)

A BILL to amend and reenact §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia, relating to limitations on enforcement of judgments; judgment liens; settlement agents.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-251. Limitations on enforcement of judgments.

A. No execution shall be issued and no action brought on a judgment, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, after 20 10 years from the date of such judgment or domestication of such judgment, unless the period is extended as provided in this section.

B. The limitation prescribed in subsection A may be extended on motion of the judgment creditor or his assignee with notice to the judgment debtor, and an order of the circuit court of the jurisdiction in which the judgment was entered to show cause why the period for issuance of execution or bringing of an action should not be extended. Any such motion shall be filed within the 20-year period from the date of the original judgment or from the date of the latest extension thereof. If upon the hearing of the motion the court decides that there is no good cause shown for not extending the period of limitation, the order shall so state and the period of limitation mentioned in subsection A shall be extended for an additional 20 10 years from the date of filing of the motion to extend. Additional extensions may be granted upon the same procedure, subject in each case to the recording provisions prescribed in § 8.01-458. This extension procedure is subject to the exception that if the action is against a personal representative of a decedent, the motion shall be within two years from the date of his qualification; the extension may be for only two years from the time of the filing of the motion; and there may be only one such extension by the recordation of a certificate in the form provided in subsection H prior to the expiration of the limitation period prescribed herein in the clerk's office in which such judgment lien is recorded and executed by either the judgment lien creditor or by his duly authorized attorney-in-fact, or agent. Recordation of the certificate shall extend the limitations of the right to enforce such judgment lien for 10 years from the date of the recordation of the certificate. The clerk of the court shall index the certificate in both names in the index of the judgment lien book and give reference to the book and page in which the original lien is recorded.

C. No suit shall be brought to enforce the lien of any judgment, including judgments in favor of the Commonwealth, upon which the right to issue an execution or bring an action is barred by other subsections of this section, nor shall any suit be brought to enforce the lien of any judgment against the lands which have been conveyed by the judgment debtor to a grantee for value, unless the same be brought within 10 five years from the due recordation of the deed from such judgment debtor to such grantee and unless a notice of lis pendens shall have been recorded in the manner provided by § 8.01-268 before the expiration of such 10-year five-year period.

D. In computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted. Sections 8.01-230 et seq., 8.01-247 and 8.01-256 shall apply to the right to bring such action in like manner as to any right.

E. The provisions of this section apply to judgments obtained after June 29, 1948, and to judgments obtained prior to such date which are not then barred by the statute of limitations, but nothing herein shall have the effect of reducing the time for enforcement of any judgment the limitation upon which has been extended prior to such date by compliance with the provisions of law theretofore in effect. Notwithstanding the limitations period prescribed by subsection A, any judgment lien dated prior to July 1, 2021, shall remain enforceable under this section for a total of 13 years from the date of such judgment lien.

F. This section shall not be construed to impair the right of subrogation to which any person may become entitled while the lien is in force, provided that he institutes proceedings to enforce such right within five years after the same accrued, nor shall the lien of a judgment be impaired by the recovery of another judgment thereon, or by a forthcoming bond taken on an execution thereon, such bond having the force of a judgment.

G. Limitations on enforcement of judgments entered in the general district courts shall be governed by § 16.1-94.1, unless an abstract of such judgment is docketed in the judgment book of a circuit court. Upon the docketing of such judgment, the limitation for the enforcement of a district court judgment is

the same as for a judgment of the circuit court.

H. Any extension of the limitations of the right to enforce a judgment shall conform substantially with the following form:

**CERTIFICATE OF EXTENSION OF
LIMITATION OF RIGHT TO ENFORCE JUDGMENT LIEN**

Place of Record _____

Date Judgment Docketed _____

Judgment Lien Book _____ Book Page _____

Name of Creditor(s) _____

Name of Debtor(s) _____

I/we, the judgment lien creditor(s), do hereby certify that the aforementioned judgment lien be extended 10 years from the date of my/our endorsement upon this certificate.

Judgment Creditor/Attorney-in-Fact/Agent: _____

Commonwealth of Virginia

County/City of _____

Subscribed, sworn to and acknowledged before me by

_____ this _____ day of _____, 20 _____

My Commission expires: _____

Notary Public: _____

§ 8.01-458. From what time judgment to be a lien on real estate; docketing revived judgment.

Every judgment for money rendered in this Commonwealth by any state or federal court or by confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated; ~~provided, however, when a judgment is revived under the provisions of § 8.01-251, that such revived judgment shall not be a lien as prescribed in this section unless and until such judgment is again docketed as provided herein. In such event the lien shall be effective from the date of the original docketing.~~ Any judgment or decree properly docketed under the provisions of this section shall, if the real estate subject to the lien of such judgment has been annexed to or merged with an adjoining city subsequent to such docketing, be deemed to have been docketed in the proper clerk's office of such city.

§ 55.1-339. Release of deed of trust or other lien.

A. As used in this section:

"Deed of trust" means any mortgage, deed of trust, or vendor's lien.

"Judgment lien" includes a judgment lien prescribed by § 8.01-458 but does not include any lien in favor of the federal, state, or local government, or any political subdivision thereof.

"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee, or obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond, or other evidence of debt.

"Payoff letter" means a written communication from the lien creditor or servicer stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.

"RESA" means Chapter 10 (§ 55.1-1000 et seq.), Real Estate Settlement Agents.

"Satisfactory evidence of the payment of the obligation secured by the deed of trust or judgment lien" means (i) any one of (a) the original canceled check or a copy of the canceled check, showing all endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in written or electronic form of a wire transfer to the bank account of the lien creditor or servicer, as applicable, or (c) a bank statement in written or electronic form reflecting completion of the wire transfer or negotiation of the check, as applicable, and (ii) a payoff letter or other reasonable documentary evidence that the payment was to effect satisfaction of the obligation secured or evidenced by the deed of trust or judgment lien.

"Satisfied by payment" includes obtaining written confirmation from the lien creditor that the underlying obligation has a zero balance.

"Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

"Settlement agent" has the same meaning ascribed to it in § 55.1-1000, provided that a person shall not be a settlement agent unless he is registered pursuant to § 55.1-1014 and otherwise fully in compliance with the applicable provisions of RESA.

"Title insurance company" has the same meaning ascribed to it in § 38.2-4601, provided that the title insurance company seeking to release a lien by the process described in subsection E issued a policy of title insurance, through a title insurance agency or agent as defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was satisfied by payment made by the title insurance agency or agent also acting as the settlement agent.

B. 1. Except as provided in Article 3 (§ 55.1-346 et seq.), after full or partial payment or satisfaction

has been made of a debt secured by a deed of trust, vendor's lien, or other lien, or any one or more obligations representing at least 25 percent of the total amount secured by such lien, but less than the total number of the obligations so secured, or the debt secured is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed of trust prepared pursuant to § 55.1-318 only when the obligor or the settlement agent has paid the debt in full and requested that the instrument be released.

If the lien creditor receives notice from a settlement agent at the address identified in its payoff statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the certificate within 90 days after receipt of such notice to the settlement agent at the address specified in the notice received from the settlement agent.

If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by hand delivery, electronic delivery via the clerk's electronic filing system, or delivery by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained.

If the lien creditor has already delivered the certificate to the clerk's office by the time it receives notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff statement.

¶ *Except as provided for judgment lien creditors in § 8.01-454*, if the lien creditor has not, within 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or attorney may take an assignment of the right to the \$500 penalty or facilitate such an assignment to any third party designated by the settlement agent or attorney. Following the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement, the lien creditor shall pay any court costs and reasonable attorney fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond, or other evidence of debt secured by such deed of trust, vendor's lien, or other lien referred to in subdivision 1 or any interest therein has been assigned or transferred to a party other than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien creditor for failure to comply with this subsection, as set forth in subdivision 1.

C. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney, or attorney-in-fact or any person to whom the instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with the certificate of satisfaction by the creditor, or his duly authorized agent, attorney, or attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or discharged has been paid to such creditor or his agent, attorney, or attorney-in-fact, who was entitled and authorized to receive such debt when the debt was satisfied.

D. When the certificate of satisfaction has been signed and the affidavit required by subsection C has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

E. Release of lien by settlement agent or title insurance company.

A settlement agent or title insurance company may release a deed of trust *or judgment lien* in accordance with the provisions of this subsection (i) if the obligation secured by the deed of trust *or judgment lien* has been satisfied by payment made by the settlement agent and (ii) whether or not the settlement agent or title insurance company is named as a trustee under the deed of trust or otherwise has received the authority to release the lien.

1. Notice to lienholder.

a. After or accompanying payment in full of the obligation secured by a deed of trust *or judgment lien*, a settlement agent or title insurance company intending to release a deed of trust *or judgment lien* pursuant to this subsection shall deliver to the lien creditor by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, a notice of intent to release the deed of trust *or judgment lien* with a copy of the payoff letter and a copy of the release to be recorded as provided in this subsection.

b. The notice of intent to release shall contain (i) the name of the lien creditor, the name of the

servicer if loan payments on the deed of trust *or judgment lien* are collected by a servicer, or both names; (ii) the name of the settlement agent; (iii) the name of the title insurance company if the title insurance company intends to release the lien; and (iv) the date of the notice. The notice of intent to release shall conform substantially to the following form:

NOTICE OF INTENT TO RELEASE

Notice is hereby given to you concerning the deed of trust *or judgment lien* described on the certificate of satisfaction, a copy of which is attached to this notice, as follows:

1. The settlement agent identified below has paid the obligation secured by the deed of trust *or judgment lien* described herein or obtained written confirmation from you that such obligation has a zero balance.

2. The undersigned will release the deed of trust *or judgment lien* described in this notice unless, within 90 days from the date this notice is mailed by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, the undersigned has received by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, a notice stating that a release of the deed of trust *or judgment lien* has been recorded in the clerk's office or that the obligation secured by the deed of trust *or judgment lien* described herein has not been paid, or the lien creditor or servicer otherwise objects to the release of the deed of trust *or judgment lien*. Notice shall be sent to the address stated on this form.

(Name of settlement agent)

(Signature of settlement agent or title insurance company)

(Address of settlement agent or title insurance company)

(Telephone number of settlement agent or title insurance company)

(Virginia RESA registration number of settlement agent at the time the obligation was paid or confirmed to have a zero balance)

2. Certificate of satisfaction and affidavit of settlement agent or title insurance company.

a. If, within 90 days following the day on which the settlement agent or title insurance company mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the settlement agent or title insurance company a notice stating that a release of the deed of trust *or judgment lien* has been recorded in the clerk's office or that the obligation secured by the deed of trust *or judgment lien* has not been paid in full or that the lien creditor or servicer otherwise objects to the release of the deed of trust *or judgment lien*, the settlement agent or title insurance company may execute, acknowledge, and file with the clerk of court of the jurisdiction in which the deed of trust *or judgment lien* is recorded a certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the ~~lien~~ *lien creditor*, the servicer, or both. The certificate of satisfaction shall include the settlement agent's RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of trust *or judgment lien* or obtained written confirmation from the lien creditor that such obligation has a zero balance. The certificate of satisfaction shall note that the individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the RESA registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the deed of trust *or judgment lien* described therein as provided in this subsection.

b. The certificate of satisfaction used by the settlement agent or title insurance company shall include an affidavit certifying (i) that the settlement agent has satisfied the obligation secured by the deed of trust *or judgment lien* described in the certificate, (ii) that the settlement agent or title insurance company possesses satisfactory evidence of payment of the obligation secured by the deed of trust *or judgment lien* described in the certificate or written confirmation from the lien creditor that such obligation has a zero balance, (iii) that the lien of the deed of trust *or judgment lien* may be released, (iv) that the person executing the certificate is the settlement agent or the title insurance company or is duly authorized to act on behalf of the settlement agent or title insurance company, and (v) that the notice of intent to release was delivered to the lien creditor or servicer and the settlement agent or title insurance company received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in the following form:

AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

The undersigned hereby certifies that, in accordance with the provisions of § 55.1-339 of the Code of Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a settlement agent or title insurance company as defined in subsection A of § 55.1-339 of the Code or a

duly authorized officer, director, member, partner, or employee of such settlement agent or title insurance company; (b) the settlement agent has satisfied the obligation secured by the deed of trust *or judgment lien*; (c) the settlement agent or title insurance company possesses satisfactory evidence of the payment of the obligation secured by the deed of trust *or judgment lien* described in the certificate recorded herewith or written confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement agent or title insurance company has delivered to the lien creditor or servicer in the manner specified in subdivision E 1 of § 55.1-339 of the Code the notice of intent to release and possesses evidence of receipt of such notice by the lien creditor or servicer; and (e) the lien of the deed of trust *or judgment lien* is hereby released.

____ (Authorized signer)

3. Effect of filing.

When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and notarized as provided in this subsection and accompanied by (i) the affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor, or servicer shall operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

4. Effect of wrongful or erroneous certificate; damages.

a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a settlement agent or title insurance agent does not relieve the party obligated to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for the debt or other obligations secured by the deed of trust *or judgment lien* that is the subject of the wrongful or erroneous certificate of satisfaction.

b. A settlement agent or title insurance agent that wrongfully or erroneously executes and files or records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

c. The procedure authorized by this subsection for the release of a deed of trust *or judgment lien* shall constitute an optional method of accomplishing a release of a deed of trust *or judgment lien* secured by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a deed of trust *or judgment lien* shall not give rise to any liability or any cause of action whatsoever against a settlement agent or any title insurance company by any obligated party or anyone succeeding to or assuming the interest of the obligated party.

5. Applicability.

a. The procedure authorized by this subsection for the release of a deed of trust may be used to effect the release of a deed of trust after July 1, 2002, regardless of when the deed of trust was created, assigned, or satisfied by payment made by the settlement agent. *The procedure authorized by this subsection for the release of a judgment lien may be used to effect the release of such judgment lien after July 1, 2021, regardless of when the judgment lien was created, assigned, or satisfied by payment made by the settlement agent.*

b. This subsection applies only to transactions involving the purchase of or lending on the security of real estate located in the Commonwealth that is either (i) unimproved real estate with a lien to be released of \$1 million or less or (ii) real estate containing at least one but not more than four residential dwelling units.

c. The procedure authorized by this subsection applies only to the full and complete release of a deed of trust *or judgment lien*. Nothing in this subsection shall be construed to authorize the partial release of property from a deed of trust *or judgment lien* or otherwise permit the execution or recordation of a certificate of partial satisfaction.