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HOUSE BILL NO. 405

Offered January 21, 1994

A BILL to amend and reenact § 55-66.3 of the Code of Virginia, relating to releases of deeds of trust or other liens.

Patrons—Johnson, Almand, Mayer, Phillips, Reynolds and Stump

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-66.3 of the Code of Virginia is amended and reenacted as follows:

§ 55-66.3. Release of deed of trust or other lien.

A. 1. When payment or satisfaction is made of a debt secured by mortgage, deed of trust, vendor's lien, or other lien, or when any one or more of the obligations representing at least twenty-five percent of the whole amount secured by any such lien, but less than the whole number of the obligations so secured, when the debt secured thereby is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, have been fully paid, the lien creditor, unless he has delivered a proper release deed, shall, within ninety days after notice that the full or partial payment or satisfaction has been made, cause such payment to be recorded on a certificate of satisfaction or certificate of partial satisfaction in the clerk's office. Any lien creditor who fails to cause such recordation or to mail or deliver to the appropriate clerk's office, the obligor or the obligor's designee an executed certificate of satisfaction and the note marked "paid" within the ninety-day period shall forfeit \$300 to the lien obligor. Following the ninety-day period, if the amount forfeited is not paid within ten business days after demand for payment, the lien creditor shall pay any court costs and reasonable attorney's fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond or other evidence of debt secured by such mortgage, deed of trust, vendor's lien or other lien referred to in subdivision 1 of this subsection or any interest therein, has been assigned or transferred to a party other than the original lien creditor, and such subsequent holder is responsible for a failure to record a certificate of satisfaction or certificate of partial satisfaction or for a failure to mail or deliver to the appropriate clerk's office, the obligor or the obligor's designee an executed certificate of satisfaction and the note marked "paid," the subsequent holder shall be liable to the lien obligor for the \$300 penalty, court costs and attorney's fees specified in subdivision 1 of this subsection. It shall be the responsibility of the obligor or owner to provide the note holder with a current name and address of the person to whom the certificate of satisfaction or certificate of partial satisfaction should be sent.

B. 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. If such debt is evidenced by a separate obligation the note, bond or other evidence of debt secured by such lien, duly cancelled, shall be produced before filed with the clerk in whose office such encumbrance is recorded. If such evidence of debt cannot be produced located, 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, his agent, attorney or attorney-in-fact, who was, when the debt was satisfied, entitled and authorized to receive the same, and that such note, bond or other evidence of the debt secured by the lien has been cancelled and delivered to the person by whom it was paid or has been lost or destroyed and cannot be produced as herein required. In the event the creditor or his duly authorized agent, attorney or attorney-in-fact is unable to make the affidavit above referred to and files with the clerk an affidavit to that effect, an affidavit may be filed with the clerk by the lien debtor, or such other person as may have paid the same, stating that he fully paid the note, bond or other evidence of debt and that it was cancelled and delivered to him and has been lost or destroyed and cannot be produced.

C. If the debt is not evidenced by a separate obligation an affidavit shall be filed or recorded with the certificate of satisfaction by the creditor, his duly authorized agent or 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, his agent, attorney or attorney-in-fact, who was, when such debt was satisfied, entitled and authorized to receive the same.

D. And when so signed and the signature thereto attested by such clerk, with a certificate that such note, bond or other evidence of debt duly cancelled was produced before such clerk, or that the affidavit hereinbefore required 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

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60 satisfaction is entered and, if the encumbrance be by deed of trust or mortgage, as a reconveyance of the
61 legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly
62 executed and recorded.

63 E. As used in this section, the terms "lien creditor" and "creditor" shall be construed as synonymous
64 and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or
65 assignment, general or restrictive, upon the note, bond or other evidence of debt. As used in this section,
66 the term "obligor's designee" shall include an attorney or other settlement agent closing a transaction
67 which results in the obligor's loan being paid off.