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SENATE BILL NO. 266

Offered January 25, 1994

A BILL to amend and reenact § 55-79.84 of the Code of Virginia, relating to the Condominium Act; lien for assessments.

Patrons—Calhoun; Delegate: Almand

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-79.84 of the Code of Virginia is amended and reenacted as follows:

§ 55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments.

1. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders.

2. The lien shall also be prior to a mortgage or deed of trust described in clause (iii) of subdivision 1 of this subsection, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the six months immediately preceding perfection of the lien.

3. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of ninety days from the time such assessment became due and payable in the clerk's office in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of § 55-79.47.

2. The name or names of the persons constituting the unit owners of that condominium unit.

3. The amount of unpaid assessments currently due or past due together with the date when each fell due.

4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum shall be filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought after twenty-four months from the time when the memorandum of lien was recorded; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section; and provided further that nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees, together with interest at the maximum lawful rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of that section the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which

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60 subsection A creates a lien, maintainable pursuant to § 55-79.53.

61 H. Any unit owner or purchaser of a condominium unit, having executed a contract for the
62 disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount
63 of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the
64 principal officer of the unit owners' association or to such other officer as the condominium instruments
65 may specify. Failure to furnish or make available such a statement within ten days of the receipt of such
66 request shall extinguish the lien created by subsection A as to the condominium unit involved. Such
67 statement shall be binding on the unit owners' association, the executive organ, and every unit owner.
68 Payment of a fee not exceeding ten dollars may be required as a prerequisite to the issuance of such a
69 statement if the condominium instruments so provide.

70 *I. The unit owners' association, upon nonpayment of assessments and compliance with this*
71 *subsection, may sell the condominium unit. The sale may be at a public sale or by private negotiation*
72 *and at any time and place, but every aspect of the sale, including the method, advertising, time, place,*
73 *and terms, shall be reasonable. The unit owners' association shall give to the unit owner reasonable*
74 *written notice of the time and place of any public sale or, if a private sale is intended, of the intention*
75 *of entering into a contract to sell, and of the time after which a private disposition may be made. The*
76 *same notice shall also be sent to any other person who has a recorded interest in the condominium unit*
77 *which would be cut off by the sale, but only if the interest was on record eight weeks before the date*
78 *specified in the notice as the date of any public sale, or eight weeks before the date specified in the*
79 *notice as the date after which a private sale may be made. The notices required by this subsection may*
80 *be sent to any address reasonable in the circumstances. The sale may not be held until six weeks after*
81 *notice was sent. The association may buy at any public sale and, if the sale is conducted by a fiduciary*
82 *or other person not related to the association, at a private sale.*

83 *J. The proceeds of a sale under subsection I shall be applied in the following order:*

84 *1. The reasonable expenses of the sale;*

85 *2. The reasonable expenses of securing possession before sale; holding, maintaining and preparing*
86 *the condominium unit for sale, including payment of taxes and other governmental charges, premiums*
87 *on hazard and liability insurance, and reasonable attorney's fees and other legal expenses incurred by*
88 *the association;*

89 *3. Satisfaction in the order of priority of any prior claims of record;*

90 *4. Satisfaction of the association's lien;*

91 *5. Satisfaction in the order of priority of any subordinate claim of record; and*

92 *6. Remittance of any excess to the unit owner. Unless otherwise agreed, the unit owner is liable for*
93 *any deficiency.*

94 *K. If a condominium unit is sold pursuant to subsection I, a good faith purchaser for value shall*
95 *acquire the unit owner's interest in the condominium unit free of the unit owner's association debts*
96 *which gave rise to the lien under which the sale occurred and any subordinate interest, even though the*
97 *unit owners' association or other person conducting the sale failed to comply with the requirements of*
98 *this section. The person conducting the sale under subsection I shall execute a conveyance to the*
99 *purchaser sufficient to convey the condominium unit which states that the conveyance is executed by*
100 *him, after a foreclosure by power of sale of the association's lien, and that he has power to make the*
101 *sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of*
102 *the facts of nonpayment of the assessment and of the giving of the notices required by subsection I are*
103 *sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not*
104 *required even though the unit owners' association is named as grantee in the conveyance.*

105 *L. At any time before the unit owners' association has disposed of the unit or entered into a contract*
106 *for its disposition under the power of sale, the unit owner, or the holder of any subordinate security*
107 *interest, may cure the unit owner's default and prevent sale or other disposition by tendering the*
108 *performance due, including any amounts due because of exercise of a right to accelerate, plus the*
109 *reasonable expenses of collecting the amounts due and proceeding to foreclosure incurred to the tender,*
110 *including the reasonable attorney's fees of the creditor.*