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## SENATE BILL NO. 267

Offered January 25, 1994

*A BILL to amend and reenact § 55-516 of the Code of Virginia, relating to the Property Owners' Association Act; lien for assessments.*

Patrons—Calhoun; Delegate: Almand

Referred to the Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55-516 of the Code of Virginia is amended and reenacted as follows:**

§ 55-516. Lien for assessments.

A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration.

1. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien.

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 property 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.

4. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55-58.2 shall be given in the same fashion as if the association's lien were a judgment.

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

1. The name of the development;

2. A description of the lot;

3. The name or names of the persons constituting the owners of that lot;

4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;

5. The date of issuance of the memorandum;

6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ 55-508 et seq.) of Title 55.

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

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien.

D. 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, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the

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60 institution of a suit under this section. Nothing herein shall extend the time within which any such lien  
61 may be perfected.

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

65 G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B  
66 hereof, the lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of  
67 § 55-66.3 the principal officer of the association, or any other officer or officers as the declaration may  
68 specify, shall be deemed the duly authorized agent of the lien creditor.

69 H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which  
70 subsection A hereof creates a lien, maintainable pursuant to § 55-515.

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

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

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

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

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

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

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

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

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

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